BENGAL SECRETARIAT LIBRARY.
HEAD
Register Entry No 21
19 MAR 1940
Received from Author.
113/14/40.

CRIME AND CRIMINAL JUSTICE

"Social evolution implies some awareness of past
history and some reasoned guidance
towards a future."

CRIME
AND CRIMINAL JUSTICE

An outline of Criminal Sociology : Criminology ; Penology ;
Criminal Jurisprudence and Law ; and
Criminal Investigation.

BY

Abul Hasanat, I. P.,

Superintendent of Police, Noakhali, Bengal ;
Author of works on Sufism and Sex.

FOREWORD BY

Sir Hari Singh Gour, M.A., D. Litt., D.C.L., LL.D

Author of "The Law of Transfer in British India,"
"The Penal Law of India," "The
Hindu Code," etc., etc.

Rs. 5/8/- (8s. 6d.)

PUBLISHED BY
THE STANDARD LIBRARY.
Dacca, Bengal, India.

364
Al 166

*Chief Distributors**
MESSRS. THACKER, SPINK & CO., (1933) LTD.,
CALCUTTA.

ALL RIGHTS RESERVED.

L:067

PRINTED BY N. C. NAG ROY
At the Mill-Press, Noakhali, Bengal.

---

*For agencies, arrangements are to be made with the Chief Distributors.

FOREWORD

I have gone through the advance copy of Mr. Abul Hasanat's work on "Crime and Criminal Justice" and note that he has focussed the international view of crime as well as its genesis in different countries, together with special reference to the great penal and criminal code of India.

The genesis of crime depends upon the policy of the state. Many of these crimes that were formerly punishable by death have passed out of the draconian rigour, while many new offences have come into existence owing to the change of society and its social order, and the threat to which, the State has attempted to counter.

The law of *mens rea* has equally undergone a change with the development of social order, but its fundamentals still remain.

The author of this work has rightly observed that the question of responsibility was inadequately taken into account in the early period when the cause of crime did not receive the deliberation it has since received, and the State was content in treating all offences as a menace to it. Not only was the offender punished, but also those who were considered nearest and dearest to him were both punished and deprived of their property.

Curiously enough, a still more extreme view of responsibility has been taken in a certain large European state in which the offender, if a member of a certain despised race, is punished by the expropriation of all property belonging to all members of that race, although they were completely ignorant of the offence or the offender.

This shews the extent to which human vendetta can extend. The doctrine of criminal responsibility in a better ordered state, is to treat the offender solely for his crime, and to award to him the punishment which serves as a corrective for him and sets an example to others similarly inclined.

The author has rightly devoted a chapter to the principles of criminal evidence which contains a good summary of the law administered in India as well as in many European countries.

It is impossible to enumerate the manifold problems that the Author has dealt with in his extremely readable book. I have no doubt that the work will command a large sale, both amongst scholars and students who study problems of criminology in India and elsewhere.

H. S. Gour.

PREFACE

In writing the preface, my first thoughts, naturally enough, turn to my own department. I visualize a happy future in which the officers and men of the police department will command the confidence of a gradually enlightened and steadily reconciled Indian public. It has been the care of the Provincial Governments to see that this state of affairs comes soon into being. I have pleaded for this department a place in the 'machinery of justice'.

I have no reasons to doubt its enlightened progress in view of the impetus now being given by eminent leaders like our present Inspector-General of Police, Mr. A. D. Gordon, C. I. E., I. P., J. P. He, for his part, has been constantly encouraging more thinking and studying and his own notes, articles, and books have served as inspiration to me in the present studies.

As the eminent criminologist, Enrico Ferri, has observed, police and prison officers should widen their knowledge of criminal biology and psychology so as to be more efficient in the social task of their treatment of human criminals.

An eminently laudable recommendation of the Indian Jails Committee (1929-30) is that every jail will have a full-time superintendent well-versed in the principles of penology, other subordinates having at least an elementary knowledge of the science. The United Provinces Jail Reforms Committee the other day also, while accepting the recommendation of the Experts' Committee about the establishment of a cadre of wholetime superintendents, have not agreed that these officers should be recruited from amongst medical graduates, thus giving *preference to those having qualification in Criminology and Penology*. It is a singularly happy feature that Ministers-in-charge, Inspectors-General of Prisons and other prison officials are drawing public sympathy and attention to the grave problems of dealing effectively with criminals. I have devoted considerable space to penology and tried to deal with it in all its aspects.

Sir Hari Singh Gour aptly observed that the study of Criminal Law in the Law Schools of this country is regarded as dry-as-dust, but if the present writer has been able to impart to the subject and its broad features some degree of the fascination he has himself felt in associating the subject with the great problems of sociology, he will consider his work well-done.

Ferri observed that the practical means of securing fundamental reforms of the judicial bench ought to begin with the organization of the University, for in the course of the faculty of law it will be necessary to introduce a more vigorous and modern stream of social and anthropological studies which must also eventually put new life into the ancient maxims of the law. I have had a great deal to say on the machinery of justice and I have purposely included the criminal investigator in the machinery itself. I have treated of criminal investigation from a new angle.

Prevention by the police and the public would require a volume by itself and the subject is too vast to be squeezed into a general treatise like this. I have only touched the fringe of the subject.

I am immensely indebted to Sir Hari Singh Gour for the favour of a foreword to this book. His eminence among Indian jurists and his authorship of various works on law are too well-known to need a mention by me here.

I am also indebted to Mr. G. H. Mannooch, I. P., J. P., Deputy Inspector-General of Police, Bengal, and Mr. H. G. S. Bivar, I. C. S., District and Sessions Judge, Bengal, for the very kind favour they have done me by going through considerable portions of the draft and offering valuable advice.

The illustration of finger-prints is adapted from one quoted by Nigel Morland in his valuable book, **The Conquest of Crime.**

Although I have drawn from my experience in the Police Department and from that of my friends, the views and opinions expressed in this book are entirely mine. The academic discussions will naturally transcend experiences of individuals, although many, and rest on comparative studies of world conditions, past and present.

It was very kind of the various Police, Law, and Sociological Magazines and Journals, like the Bengal Police Magazine, the Indian Police Gazette, the Criminal Law Journal of India, Lahore, the Nagpur Law Journal, the Aryan Path, Bombay, among others—journals with wide circulation in and outside India, to have published advance extracts from this book with a view to drawing general attention to the grave problems the book has attempted to discuss.

The police, judicial and prison officers, lawyers, legislators, and other enlightened agencies deserve to be heartened and encouraged by the thought that they have behind them the interest, the sympathy, and the goodwill of the public at large. If the present work can enlighten the public to any extent with the problems of sociology it has to face but can shirk only at grave risks, the writer will feel comforted. It has given the writer immense fascination to travel with his readers round and round the earth and up and down the ages.

Noakhali—May, 1939. **Abul Hasanat.**

CONTENTS

1. The Nature of the Problem of Crime 17—90
2. The Nature of the Criminal ··· 93—123
3. The Nature of the Criminal (contd.) ··· 124—145
4. The Psychology of the Criminal ··· 146—181
5. Factors in Criminality in the Environment ··· ··· ··· 182—240
6. The Types of Criminals ··· ··· 241—247
7. Juvenile Criminality ··· ··· 248—275
8. Female Criminality ··· ··· 276—292
9. The Habitual Criminal ··· ··· 293—301
10. Criminal Classes and Common Swindlers of India ··· ··· ··· 302—310
11. The Nature of Crime ··· ··· 313—337
12. The Extent and Types of Crime ··· 338—362
13. Forms of Crime ··· ··· ··· 363—368
14. The Origin and Evolution of Punishment 371—375
15. The Forms of Punishment ··· 376—408
16. The Institution of Imprisonment ··· 409—424
17. Review of Penal Methods ··· ··· 425—481
18. The Efficacy and Ethics of Punishment 482—508
19. Criminal Law : Penal Codes ··· 511—543
20. Criminal Responsibility ··· ··· 544—570

CONTENTS

21. Machinery of Justice ... ... 571—630

22. The Principles of Evidence ... 631—656

23. Criminal Investigation ... ... 657—678

24. Principles underlying Criminal Investigation ... ... 679—753

25. General Remedies, Prevention, and Conclusion ... ... 754—768

26. Appendix A : Criminal Classes and Common Swindlers in India ... 1—15

27. Appendix B : Survey of Specific Forms of Crime : A Critical Appreciation of the Indian Penal Code ... ... 16—132

28. Appendix C : Some Comparative Figures of Crime ... ... 133—138

29. General Index ... ... 907—915

CHAPTER I

THE NATURE OF THE PROBLEM OF CRIME

A PLEA FOR THE STUDY OF CRIMINOLOGY

Sec. 1. The co-existence and co-extensiveness of Crime with humanity—Old story of creation and Crime—New story of Evolution—Evolution and Crime—Primal Law—Growth of Religions—of Governments.

The story of Crime has been co-existent with that of humanity. It has also been co-extensive. Over a large part of the civilised world it was believed and taught that the very human species came into being for an act of transgression on the part of its forefather. Whether the first offence was a sin, vice or crime may be open to dispute, but crime occurs, according to the old story itself, very soon after, when Cain slew his brother Abel. How crime appeared and reappeared thereafter and was dealt with by the sons of Adam is very much a matter of legend and speculation. We see in this legendary period God combining with man in punishing the transgressors and Divine wrath as indiscriminately crushing as human devices were brutally cruel.

Old Adam, however, continued ineluctable. Man went on failing and erring as ever. Nothing could better disprove the theory of only heavy punishments deterring offenders, yet man, seeing all this and believing all the rest, went his cruel ways for ages. As many as ten plagues in quick succession were brought upon the Egyptian Pharaoh and his people by Jehovah when the Israilites were in bondage and none wondered why the All-knowing Jehovah Himself could not have foreseen the effect nor spared the erring people successive visitations by devising a single one sufficiently deterrent !

If the old story were true, man might very well despair for ever and keep back from attempting a task which has apparently defeated God Himself. Fortunately, the old idea has exploded and the story of our world, though yet imperfectly known, is gradually being reconstructed on at least a truer basis. The conception has now been abandoned in favour of an extension of Earth's life backwards for an enormously long period and of human life for a long one also and of its origin from quite another source. The theory of Evolution is common knowledge to-day. We now know of the fishes, the reptiles, the birds and mammals, monkeys, apes and anthropoids that took life and formed and reformed for ages and ages through gulfs of time at which imagination reels, before conscious human individuals appeared on earth. They started on life's course with what strength they inherited from the animal kingdom and rudimentary brains, also inherited, but gradually unfolding under stresses of necessity, the mother of invention.

And, as I have said, crime co-existed in this version of the story also. Man inherited gregariousness and he combined. He inherited the parental instinct and he defended his young and reared them up. Families coalesced and multiplied and tribes originated. But the serenity did not go unruffled. There were the individuals with their primitive egotisms—the crude instinct of the young to go off and pair by themselves as they grew up or otherwise work to their own individual interests. The dangers and disadvantages of isolation were checks against there embarking off and the mental adjustment of the needs of the primitive human animal to a developing social life can be traced in the customary law of savages, the Tabus. The anthropologist J. J. Atkinson has clearly shown this in his Primal Law.

Law, in whatever form we may conjecture it, represents the restraints upon the primitive egotisms of the individual. The Science of Psycho-analysis which scrutinises the way in which the egoistic and passionate impulses of the child are restrained, suppressed, modified or overlaid to adapt them to the needs of social life, throws considerable light upon the history of primitive society. Individuals who broke this commandment or that were dealt with by the elders in some way or other. Punishments were often as full of superstitions as offences. Almost every commission of an unpropitious act was considered a crime or vice or sin and as the society considered itself endangered by the failing of an individual, it sometimes considered even offering up the offender's life as insufficient atonement.

We shall detail primitive crime in the proper place but shall only incidentally indicate here that, in a sense, crime, then to a great extent mixed up with sin, necessitated growth of religions. These men were incapable of systematic thinking. Collective thinking was unknown. However, quite early, some older and steadier minds sharing the same fears, the same anxiety against disruption of society, but a little more farsighted than others, asserted themselves, to prescribe rules to be obeyed. The anxiety of prophets and other teachers has also been to keep society from disintegration. They gave stern laws in the name of God or gods and provided for the criminal a double punishment—one in the hands of men below and the other of God above and hereafter. They aimed at controlling society by both an actual and a future punishment and the horrible but unknown nature of the latter was depicted in the most glowing and terrifying colours at their command. We could have likened them to modern parents who would control their children with the rod as well as by horror-striking threats. The difference is only that by the prophets and priests, much of the threat held out was believed as true and really awaiting human kind. They shared the common fears and hopes and believed in their complicated hocus pocus with as much zeal as we do in modern scientific devices.

The growth of government is bound up internally with the control of social behaviour.

4[illegible]9

Whether it be a priest-king who ruled in the name of God, a despot who ruled others with more self-interest,—there was always an attempt to combat crime, however various might have been its implication. The vast majority of mankind was supposed to be entitled to no say and admitted the claim of the few to lead. Sometimes the remedy was worse than the disease but men could not detect their own errors.

Sec. 2. Man's "Trial and Error" method—Why and how law changes—Concept of Justice—Nature of Justice—Increasing participation of the people in Law-making.

Thus "the history of mankind is an immense sea of errors in which here and there obscure truths may be detected and availed of." It undoubtedly demonstrates that we have by no means been favourites of a God or many gods and the perilously erroneous path we have trodden could not have been the one lighted by Divine wisdom. Man has never been favoured with any "Follow-and-win" method ; he has but learned from the "Trial-and-error" one.

Thus Law has been a thing that changes. It has as many coats as a dandy and as many reflections as the glass of Fashion. Law can be cruel, oppressive and even brutal ; it can defeat its very purpose. Its history would light up the whole dark night of man's groping past. In Cromwell's day and later, a man might be hanged for stealing a shilling or so. Man in his mad frenzy countenanced such a thing as Jedburgh Justice which meant, "hang first and try afterwards !" We shall have occasion to study conditions in the distant and immediate past. It will by no means be flattering to the intelligence of man to recount the stories of deeds and misdeeds of man in the name of Law.

Many cruel things that have been done before are impossible now. And that because Law has been deposed from the altar of Finality. Justice demanded this and is ever doing so. And this idea is the creation of man's mind. It does not seem to exist in Nature. There seems to be no justice between the fox and the fowl, the wolf and the lamb. It is even now being practically demonstrated that justice can not exist between strong nations and the weak. "The strong do what they can and the weak suffer what they must", we are told. But still the idea lives. It is here in this world. It has never been burned out of man's mind by fire or cut out of his soul by the sword. It has triumphed over all tyrants, it has outlived all despotisms.

The symbol of justice is a pair of scales. We have had no better definition of justice than that by Ulpian, the great Roman lawyer, who, 1700 years ago, laid down that justice represented the constant and perpetual wish to render every one his due.

"Give the devil his due", it would ever assert. The bondman, the sinner, the erring, the criminal—all in their turns have persistently claimed justice as a right. No hands were lifted more heroically in the history of mankind than those clasped hands of these outcasts striking for the liberty of justice. Kings destroyed prophets after prophets had raised an outcry and king after king has been destroyed by the people who joined hands with the righteous. The conscience of simple men and women has contended for justice against the cruel sword of resentful and implacable authority. Yet simple men and women have often denied others justice. The French Revolutionary Tribunal went to work, and a steady slaughtering began. Day by day, week by week, the infernal guillotine chopped off heads and more heads. After the murder of Abraham Lincoln, the American people went off its head.

It is the increasing participation of the people itself that has brought about slow but inevitable changes. Treatment has been more and more humane as brother has had to legislate against his erring brother or sister against her fallen sister. We can look for more humane treatment when the Public has become more enlightened.

Sec. 3. Popular notions about crime—Popular antagonism to progressive thinking—Retributive and deterrent punishments—Rigour of Law in medieval England—Conditions in India.

Popular notions about crime are yet very hazy. Most members of the public are uninformed or very ill-informed. Popular ideas represent a crude mixture of the old and the new. The ideas of fear, vengeance and hatred are relics from the ancient world. People take those of guilt, punishment, expiation and retribution from theology. They draw from philosophy concepts about justice, free will, moral responsibility, depravity, sick souls, dwarfed personalities and suppressed ego. Modern science tells them something of the criminal type, the born criminal, the psychopaths and those of defective glands.

Then too there is the popular antagonism to progressive thinking. There is as yet very little tendency in this line to put into practice discoveries of modern science. Men stand steadfast to past ideas and conceptions. They seem reluctant to break away even in the face of a grim and visible necessity. There is need for the increasing awareness of society of problems connected with crime. This will make for new ideas in the light of the past and yield more effective treatment of this important problem.

Evolution is now the key-word in every domain. Man has now fortunately a long past from which to derive profit. He has, however, to be self-critical also. We are as apt to be forgetful about our own mistakes as our forefathers have been about theirs in the past.

To those who still seem to relish the idea of dealing "strongly" with crime and deridingly allude to all attempts at humanising treatment of the criminal as "Milk-and-water" policy, nothing would do more good than a peep into the past. Retribution is certainly unworthy of man and can only be forgiven because of his animal origin. Deterrent punishments have had a very long trial without complete success. The ages of torture and cruelty have long been discredited.

Let us, for example, study the rigour of law in medieval England with reference to the conditions then prevailing. We read incredulously about the public burning of religious heretics, of the torture of criminals to extract confessions, of murder and outrages, of the offence of rape, of the hunting and tormenting of animals for "sport", of men and women paying money for the pleasure of throwing sticks at a tethered cock until it died and have some idea of the contagious cruelty all round. Most of us, were we suddenly put back into the London of King Henry VIII, would be as frightened as if we were thrown into a ward of unattended criminal lunatics. Or let us consider days shortly after the time when the great poet Shakespeare lived and wrote. Cromwell's parliament drowned or burned three thousand women for witchcraft ! Several strokes with the lash was the doctor's cure for a lunatic. Even as late as about 1840, lunatics were chained up in public and could be tormented by them at will on payment of small fees at the Bethlehem Hospital at London. While Shakespeare wrote about justice being tempered with mercy or the quality of justice not being strained, there was little mercy to be found on the island. Three hundred of noble men and women were burned alive in three years on religious controversies ! A beggar was whipped the first time he was found, then his ears were cut off and the third time he was killed ! Even long afterwards, common law punished people by slitting their nostrils and cutting off their ears ! Parliament was corrupt. Seats were offered publicly for sale. Prisons were let out to contractors who worked them for profit. It was no wonder thus that members of Parliament took little or no interest in their constituencies. We know, for example, how once when Lord North, on his way to London, was trying to recollect where he had heard the names, Bramber and Steyning, was told by his coachman, "That is the name of the Constituency that has long been honoured by you in Parliament as its representative, my Lord !" A single misfortune could doom a person to imprisonment for life. Prisons were cramped. Inmates were treated like beasts. For years men and women lingered in prisons even after due terms because they could not pay the warders for little bits of favour accepted. Slaves were sold, chained, handcuffed and lashed. In one century, 250,000 slaves were thrown into the sea alive or dead from British ships ! When Shakespeare was writing of Shylock, the judges of England were inflicting torture as cruel as Shylock's ! Cromwell slaughtered people right and left. Flogging went on. Sometimes a man would get a thousand lashes ! Teachers and writers were often put to the pillory, books and pamphlets not favoured by the ruling class were burned by the public hangman. Milton's books were burned and the author of Robinson Crusoe was put to the pillory. Thus was law prostituted and its rigour made conditions no livelier.

Sir E. G. Cox mentions the appalling state of India at the commencement of the British Administration. The formidable catena from the Marhattas to the burglars comprised Pindaris, Thugs, dacoits, robbers and thieves, each class claiming superiority over the next in order!

The village police had been existing. The Kotwal in the town was the law-officer, Magistrate and the Superintendent of Police combined. He levied his own tolls apart from what lump sums or other fees he received from above. Ghasiram, a Kotwal of Poona in the time of Baji Rao, had been causing havoc all round till he was found out and abandoned to the fury of the mob who stoned him to death.

Arrangements for administration of criminal justice could not be regarded as satisfactory from a modern viewpoint. There was little law and less procedure. Offences went undefined, the Mamlatdars had powers of life and death.

Elphinstone says, "No law seems ever to have been referred to. The only rule seems to have been the custom of the country, and the Magistrate's notions of expediency. The Hindu law was quite disused owing to its absurdity." India, at the worst, seemed only to suffer from medieval darkness and there is little point in calling undue attention to the unsatisfactory conditions here, in England or elsewhere.

Sec. 4. Attitude towards Crime to change—The Reformative and Preventive viewpoint—The Police, primarily a preventive machinery—Its evolution—Police in India.

The tyranny of unjust or unnecessarily cruel laws has led the modern mind to look in other directions for the betterment of society. In the present century, we have made no little progress on the high road of our assault on crime by means of preventive and constructive measures.

It is only very recently that Society has had the good sense to adopt the Police System as one of the main bearings in the machinery of prevention. We shall study this in the proper place but lest I should be misjudged by critics who will triumphantly quote the Police as functioning in Ancient India or other cities and states, I may as well modify the statement by saying that I am referring to the Modern Police System. The Police in England before the great reforms of the 19th century was variously constituted and variously employed. Although it gave some security, it was considered no asset. We read of its evolution as it formed and reformed as parochial constables, salaried Bow Street officers and Patrols, stipendiary Police constables and the stipendiary water-Police. It was variously employed and even sometimes prostituted to causes other than legitimate. We shall detail the growth and life of this new but now indispensable, pacific but peace-enforcing body elsewhere but may, incidentally, refer to the opposition it faced and later overcame. Immediately preceding the Reforms, conditions in London were chaotic. London in 1801 was to modern ideas hardly very populous but crime was rife. England itself was passing through an epoch of criminality. Infamous activities of Burke and Hare, cold-blooded depravity of Vaughan and his accomplices and other lurid crimes of this age surpass imagination. William Burke (1792-1829), an Irishman, was partnered by William Hare, another Irishman, in a series of infamous murders, committed at Edinburgh, to supply dissection subjects to Dr. Robert Knox. Hare, the more execrable of the two, was admitted king's evidence, and is said to have died some time in the sixties a blind beggar in London. Burke was hanged amid the execration of the crowd. The alarming frequency of mobs appealing to violence, the

Food Riots of 1800, the Luddite disturbances of 1811-16 consequent on the acute industrial distress all gave the impression that law and order stood paralysed. In the hope of suppressing the defiant spirit, six coercive measures generally known as the "Six Acts" were rushed through in a special autumn session of Parliament in 1819. Restrictions were placed on the Press, on possession and use of arms, provisions were made for search for and confiscation of unauthorised weapons and other repressive measures were enacted. The penal laws were written in blood. There were about 160 offences punishable by death! Between 1805 and 1818 there were more than two hundred executions for forgery alone!

Still the police evoked from the populace only mistrust. Probably the existing body did not merit much else. A year before the introduction of Peel's bill, the Quarterly Review said, "There can be no doubt that the whole of the existing watch system of London and its vicinity ought to be mercilessly struck to the ground. No human being has the smallest confidence in it. ....Their existence is a nuisance and a curse." The Reforms worked magic and the subsequent Force belied all fears. Some years afterwards, the Edinburgh Review referred to the Metropolitan Police in these words: "The arrangements are so good, the security so general, and the complex machinery works so quietly, that the real danger which must always exist where the wealth and luxury of a nation are brought into juxtaposition with its poverty and crime, is too much forgotten : and the people begin to think it quite a matter of course, or one of the operations of providence, that they sleep and wake in safety in the midst of hordes of starving plunderers."

The Police in India is quite as elaborate a piece of machinery, practically modelled on the same lines but falling far below the same level. We shall have occasion to summarise its merits and demerits later but may incidentally refer here to prevalence in this country of the almost pre-Reform English distrust of the Police. Its pretensions have been negatived by the public for various reasons. It has not tried whole-heartedly to popularise itself and win the public over. The Police Commission, some years ago, endorsed Sir John Woodburn's opinion that the investigating staff was "dishonest and tyrannical." It would be futile to waste energy in trying to disprove the allegations. We are steadily encouraging our force to endear itself to the people by honest, impartial and tactful dealings. We shall ever try to win adversaries over as the London Police did. There is a distinct movement afoot towards improving relations and getting ahead of prejudice. The ideal of a Police Service loved and respected stands high yet but it is honestly striving hard to attain that goal.

The Police in India is far backward in the matter of scientific equipment and the main reason is manifestly lack of funds. When the bare budget for our pay and minimum requirements has been for so long begrudged, the prospect of seemingly exorbitant expenditure for research and its concomitant laboratory could never have been very welcome. The New Constitution has handed us over to the public to be treated on our own merits and has undoubtedly offered facilities for the study of our needs at closer quarters. It is superfluous to say that no government could now do without this modern contrivance, this evolved organ of the body politic. Our occupation is by no means gone and we stand for better mutual understanding. We stand for Service and for whatever we are worth. Year after year, lacs of pounds are voted to Scotland Yard for Secret Service alone and no body raises a voice or asks as to how the money is ever spent. That is because the British Public trusts that the money is well-spent. We look for such a day in India and, one need not be unduly pessimistic. I am credibly informed that ten years ago the annual budget for the Metropolitan Police alone was about six times that of the whole Bengal Police (including the Calcutta Police). With the increased use of Wireless, Television etc., I am sure, the figures have gone up much further. The initial and recurring cost in case we·are afforded use of Scientific devices in use elsewhere will be much but the increased efficiency is sure to compensate for it amply. We shall look to the robust good sense of a gradually enlightened and steadily reconciled public.

Sec. 5. Criminology, the New Science—Its history—Its scope—Criminology and the Sciences.

Although we shall have much to do with the Police, this study will by no means be confined to this one topic. From what we know, we can be sure that there is no single cause of crime nor any one sure cure. Along with the growth of the Police, there has developed a science which covers the entire field of crime. In a sense, criminology may be said to date from any period one cares to instance. In fact, whenever man has taken cognizance of crime and proceeded to deal with it by rules or laws, whenever a prophet made an introspective appeal for ways and means to control social behaviour, the rudiments of this science were to be seen. It took a scientific form but recently. The scientific analysis and classification of penal wrongdoing and penal offenders and the association of Problems of crime to modern sciences generally owe origin to Cesare Lombroso of Turin. Born Nov. 18, 1836, of Jewish stock, at Verona, he became in turn an army surgeon, professor of mental diseases at Pavia University, and professor of forensic medicine and psychiatry at Turin. The monumental work which he published in 1875 is titled, *L'uomo delinquente* (The Criminal). His method and theory we shall study later but he will live ever as a founder of a science which is sure to prove a boon to mankind.

Criminology is not one of the fundamental sciences, but is a hybrid product of several. The early pseudo-sciences of physiognomy and phrenology attempted to describe traits of the criminal. So it may be open to dispute to limit its start having been given by Lombroso himself. His epoch undoubtedly constitutes a landmark.

Of the number of writers who have either preceded and succeeded Lombroso or been contemporaneous with him, I may mention the outstanding ones alphabetically here. They are, Aschaffenburg (Gustav), Baer (Dr. A.), Barnes (H. Elmer), Beccaria (C.B,), Bentham (Jeremy), Bonger (W.A.), Carpenter (Mary), Ellis (Havelock), Ferri (Enrico), Garofalo (Raffaele), Goddard (Henry H.), Gross (Dr. Hans), Healy (Dr. William), Lacassagne (Dr.), Mercier (Dr. Charles A.), Parmelee (M.F.), Parsons (P.A.), Quinton (R. F.), Sutherland (E. N.), Tarde (Gabriel). This is only a selected list. For a more comprehensive list, the reader is referred to the Authors' Index in Cumming's Bibliography of Crime. Writers in every quarter of the globe including representatives of most of the professions—doctors, psychologists, prison officers and police officials have taken part in discussion of this or that branch of the science.

It is well worth noting the fact that we are speaking of the science of criminology as of a recent origin whereas crime and criminals have worried mankind from the earliest times and law has been existing almost contemporaneously. This is owing to the new meaning applied to the word, "science". I shall now devote some space to what is called the scientific method, one so important for those who are seeking any form of specific or general knowledge.

When we speak of the progress of sciences in the present age, we emphasise the new method by which we are attacking problems. Hitherto, usage, tradition, external necessity and accident had furnished mankind with the unchallenged framework within which it had built up explanations and consolations. Reasoning had been of a deductive nature. Man believed in certain dicta as those of special creation, of man being the centre of interest, of God dictating and supervising details of conduct and the like and thence proceeded to deduce.

The goal of science is also the truth. We are incompetent, it is true, to penetrate the innermost nature of this world but what we thereby aim at may be called knowable aspects of things. Science is thus a name for attacking a problem, the best way that we have as yet discovered. It involves making a working agenda—observing and recording facts, classifying and organizing the data so gathered, generalising, the making and testing of new hypotheses and the predicting of future conduct. In other words, to observe, try, record, speculate, experiment, confirm or correct, communicate to other investigators, hear their communication, compare, discuss logically and so on—this, for all practical purposes, is the method of science.

We shall study in due course a number of theories relating to the criminal and advocated by various investigators. Therefore it is advisable to say a word or two regarding the nature of a *theory*. The explanation of a great number of connected phenomena by the assumption of a common cause is called a *theory*. A *theory* must therefore, be always regarded as only as an approximation to truth. It must therefore be realized that it may be replaced in time by another and better-grounded theory. This fact is admitted but this despite, there are people who will incredulously laugh at and discredit the advances of science on the ground that nothing in science has been final. As a matter of fact, finality has never yet been achieved. In face of this admitted uncertainty, however, theory is indispensable to all true science. It is in the very nature of everwidening human knowledge that theories will have to be tested, revised and altered in the light of wider ranges of observation and experiment.

Criminology is attempting to use this scientific method and has barely made a beginning. It is gradually demolishing dogmas, eliminating superstitions, dissociating emotional approaches to problems connected with crime. The future is sure to justify its efforts.

This new science attempts to cope with the problem of crime in all its aspects.

What is crime? How is it caused? Who is the criminal? How is he born or made? Can crime be cured? If not, can it be eradicated and how? What rights have the public? What rights has the criminal? These and a host of other questions are attempted to be answered by Criminology. The attitude of society towards the Criminal has gone from one extreme to the other and is always changing. If doctors and scientists had been no wiser than lawyers and judges, legislators and the public, the. world would still have been persecuting imbeciles, the insane and the sick. Human ailments would have still been treated with incantations, witchcraft and magic. The old idea would have persisted—of the criminal being distinct from the rest of mankind, of vengeance requiring to be sure and speedy, of crime being prevented in direct ratio to the severity of the laws. The realm of penology has been one of chaos, brutality, bewilderment. We have as yet no rational penal system. The new science is however leading us to more desirable goals.

In fact it is the law for laws. It insists that crime should be approached in a scientific frame of mind. It uses the knowledge gathered by all the social sciences separately. We cannot take vengeance on the criminal and at the same time reform him. We cannot strip him of responsibility and at the same time train him to assume responsibility. We cannot confine him for years under conditions unlike freedom and at the same time expect that he should walk out a respectable and responsible citizen. In short, Criminology would have us to override emotions and to decide by reason *just what we want to do with our criminals.* Punishment will persist but as a well-considered means to an end and not as an end in itself. Treatment will have to be based on individualized study and diagnosis. The criminologist should cater neither for the sentimentalist who would coddle the criminal nor for the sadist who would wallow in the depths of cruelty in which he could submerge a fellow being.

Reconstructive aims in this field should be two-fold.

1. To protect mankind from the ravages of criminals with such minimum restriction upon human freedom as is consistent with social good.

2. To develop the personal assets of the criminal to the highest point consistent with the primary aim of social protection and social efficiency. Talent that might be developed and used for social good should not be wasted simply because it is possessed by a criminal. To do so is like throwing away a perfectly good suit of clothes because a vest pocket has been ripped.

Professor Devon has said, "There is only one principle in penology (a branch of criminology) which is worth any consideration ; it is to find out why a man does wrong and make it not worth his while."

To give the reader some idea of the broad principles now being brought to bear on the problem of crime, while reserving details for fuller studies ahead, I might refer to the following resolutions of the International union of Criminal Law which met in 1889.

1. The misson of criminal law is to combat criminality regarded as a social phenomenon.

2. Penal science and penal legislation must therefore take into consideration the result of anthropological and sociological studies.

3. Punishment should never be isolated from social remedies nor must preventive measures be neglected.

4. The length of the imprisonment must depend not only on the moral and material gravity of the offence but also on results obtained in treatment in prison.

5. Incorrigible criminals should be put for as long a period as possible under conditions where they cannot do any harm.

These and similar principles are reached in criminology after a great deal of study and reflection in every case. It is the Ethics of law. It aims at securing the maximum justice in adjudicating between society on the one hand and the criminal on the other.

In doing so, it has to make use of knowledge gathered in the various sciences. It presses into its service almost all the sciences known to us. Lombroso derived his ideas of atavism from Biology, and based theories on knowledge of Anatomy, Physiology, Psychiatry, Anthropology and History. Zoology and Botany were studied by him with a view to tracing the "Criminal Type" down to the lowest grade of creation. Study of the organic causes of crime presuppposes a knowledge of pathology and other applied sciences—Ethnology, Eugenics, Economics and Politics.

Sec. 6. The uninformed public—Emotional reaction to crime—Enormity of the real problem—One of the greatest—Financial burden of crime—Its moral and Social costliness—Corruptive influence of organised crime—Corruption and public servants—The caught and the uncaught-Sex and crime.

The public is, as I have said, uninformed. It seems to be, too, still indifferent. The literal pabulum of the so-called reading public seems to consist almost exclusively of detective fiction. It appeals to the instinct of curiosity with imaginary adventure. The detective is pictured as a man of exceptional ability. His powers of observation are magnified by cleverly planted clues. The story ends like a love-story with a happy ending, for the detective through endless processes, mysterious but planned, catches hold of his quarry just as in the other, through unending vicissitudes, hopes and anxieties, the lover and the beloved come together to live happy ever afterwards ! This is all very well so far as casual delectation goes but the story of crime is more a tragedy than a comedy. Its reality, its ghastliness more often than not surpass imagination. Truth is sometimes stranger than fiction. Think of the enormous crime that has troubled humanity. Imagine how precariously ill-secured has society been often. Look back at the appalling quantity of blood shed by that same exasperated society in the name of law and yet with such little success. It is time that the public should demand enlightenment in this field and face reality.

So far the reaction to crime has only been emotional. Like the arm-chair casual reader of detective fiction now feeling angered at the villain, now watching with pleasure the detective's pursuit, now fretting and wishing wholesale destruction of the criminal's associates, society has been in lingering fear of the criminal and has reacted against him only emotionally. The accompaniments of social thinking are hostility, hatred and vengeance. The social mind has its peace disturbed. The treatment has consequently been also emotional. Illustrations of curious laws could be multiplied *ad infinitum* as those of crude treatments. Even now we cry out for vengeance in the more refined terms of justice and retribution. When details of a horrible crime are reported in the papers, like those of the Frank Murder case or of the recent Pakur Murder case here, great heat is generated. Instances of American lynching in dealing with offences by the coloured people against the white illustrate how brutal mob reaction can be. When the police insist on maximum sentences in all cases indiscriminately, they speak not from a sane and rational point of view but only represent the mob psychology of an exasperated agency battling against crime. On the other hand, susceptibility to tears, to crying mothers and weeping wives does make for leniency. Magistrates and judges are not always above succumbing to this.

The pity of the reaction being emotional is also that society never whole-heartedly faces the problem. It works by fits and starts. It takes a few ignorant steps when its peace is disturbed by some dire happening. Excitement is aroused and there is a clamour for hasty legislation or a demand for speedy vengeance. Then there follows a relapse. Petty crime goes unheeded. What should strike one or does stagger a student of crime is not so much these isolated and casual sensational murders or rapes but the appalling amount of *undetected* and even *unreported* crime. We are apt too often to ignore the worse. Compare the toll of malaria with that of cholera or small-pox and look at the reaction of society against each. Millions are dying of the first unheard and un-noticed while a few dying of the two last, cause consternation. The enormity of petty crime going undetected all over the country has almost imperceptively created a sort of social nervousness. People do not apprehend Thugs nowadays but they have the greatest anxiety as to where to put and how to keep their movables. Take the case of burglaries that are daily committed. The unfortunate part of it is that we have not enough trained investigators to work out every case. The busy sub-inspector makes a feeble effort but is himself handicapped by lack of time, knowledge and scientific aids.

Parsons has said, "There is no reason why courses in criminology should not be considered an essential part of the cultural education of every citizen". The reason why this should be so has been explained by him in that crime is one of the greatest problems of humanity. It has received far less attention than it should. The problem is related to life and happiness, to social progress, to economic welfare. The criminal is a menace to life and happiness, he imposes a financial burden, he is an obstacle to social progress. And above everything else we cannot afford to be wasteful in our energies and extravagant in our expenses by pursuing a useless policy in his treatment.

I have just said how the criminal induces a social nervousness by his exploits and disturbs society emotionally. Let us consider the other aspects. He imposes a huge financial burden.

We know of the annual Police budget that frightens the people but this is only a part of the huge financial costliness of crime. The magistrates, judges, clerks, jailors, warders, lawyers and the host of other people connected with criminal administration do cost a staggeringly enormous amount in expenditure. Then there is expenditure by private persons to provide locks and doors, safety vaults, private guards and watchmen.' Even then some have to insure their goods against theft and burglary. The gross cost to society has been variously estimated in America. It amounts to billions of dollars. As to actual loss to individuals and bodies, we can quote American figures as Indian statistics would be undependable. In 1922, in America, value of goods stolen from transportation companies was estimated at 100,000,000 dollars, swindlers netted in the same year 6000,000,000. Loss for political grafts and bribery to officials, would be incalculable. In Bengal alone in the years 1932 to 1935 reported cognizable and non-cognizable cases in which properties were stolen ranged between 40,573 and 44,004 and the amounts stolen between Rs. 28,38,013-11-6½ and Rs. 40,35,061-13-11½. In the whole of India figures will mount up enormously. The committee to examine the Railway police system (about 1921), for example, discovered that the total value of property stolen on Indian Railways did not fall short of one crore of rupees. We have to add in consideration the facts that a great deal of crime goes unreported and that comparatively India is a much poorer country. Sutherland observes—"Little dependence can be placed on any of these (estimates), but it seems probable, in view of the large number of items to be included and the immense losses that are not known, that the highest of these are not too high".

Next, we may consider the moral and social costliness of crime. Criminals are, in a general way, the source of the suggestion, the encouragement, the stimulation to moral weaklings to commit crime. Criminals may, in this sense, be considered the locus of criminal infection. They are teachers by example and precept. Apart from a few petty and easy crimes such as thefts and pilferings which may be committed by amateurs, the more crafty ones are seldom attempted with success by the unskilled. A burglar, for example, would draft in associates to help him and these latter will be amenable to immediate and direct initiation. A novice would magnify in his mind the difficulties involved ; the questions of the right spot, quiet digging, entrance and exit will loom large before him and the risk of the owner attacking him while he is halfway up the *Sindh* will almost stagger him. I know on reliable authority of an old burglar of Sandwip, Noakhali, who used to take out his sons to the *Char* land, erect *bundhs* and then teach them practically how to cut sindhs and attempt entry through them ! This was only an instance in which, by mere chance, the secret method of initiation became known; this, however, is going on directly and indirectly everywhere. There is all round a vicious circle of one corrupting others and an enormous amount of damage to casual entrants is done in the jails and reformatories themselves. A delinquent boy of 15, speaking of his experience in a correctional school, said, "It don't do you any good. You know how to crack a safe when you come out and lots of other things. Of course, they watch you and you have to be careful because there are so many stools-pardon me-I mean Talebearers. It's Saturday and Sunday afternoon that they do the harm ; that's when they talk. Every fellow tells the worst that he's done".

These relate to isolated criminals doing their part of the mischief. The corruptive influence of organised crime would be incalculable. Mukhlesur Rahman's gang of Noakhali-Tippera embraces hundreds of persons gradually grafted so much so that the original leader would recognize only a few of them. The Sadarchar gang of Dacca-Mymensingh counts even more and spreads over several districts. They are by no means so well-organised that proceeds of all dacoities are collected centrally and distributed but sections work for their own profit and have no means of knowing of what others are doing. These loose organisations should better be studied as merely corruptive and not directive. They spread on the 'snowball' system, so to say. The catena of expansion may be put as Abcde, Bcxyz, Cimno and so on. Among great criminal influences in the West we may mention the "big business" of the underworld in America and the "white-slave-traffic." We also know of the Ku-Klux Klan, the secret society formed in the Southern States of America in the period following the Civil War, which, by means fair and foul, opposed coloured influence in both Government and Society.

Yet another form of corruption goes on, if long unchecked, in the machinery of Government itself. I have quoted how the loss to society in America in the shape of graft to public Servants for doing and not doing a thousand odd things is calculated by authorities at an enormous amount per year. I have also said that the investigating staff in India was characterized as dishonest and tyrannical. Dishonesty, unfortunately, is to be met with almost in every department, among the low-paid underlings. The matter is only less talked about than it should be. Here is also the corruptive influence of old hands who have made their two-pice successfully enough.

In all fairness, I must say we are getting better types of men and the evil is fast receding. The public must co-operate with the higher officers in order to counteract what evil still lingers.

Our main idea here was to indicate the moral and social costliness of crime and we have surveyed affairs in various fields only to illustrate the fact that the criminal, wherever he may pose, does not stop with his own depredations but is a veritable channel of criminal infection. Criminology has to look to this aspect with more concern than to punishing the offenders themselves.

Let us pursue this topic of interest a little farther here. We shall study the attitude of society towards the criminal in detail but the trend of modern opinion is converging upon the idea that the criminal is not different in nature from the so-called non-criminal. He is as much a product of heredity and environment as others are. We all start out as criminals. Every baby is a perfect criminal. By this we mean that he is a supreme egoist. He only recognizes his own desires and everything else must be subordinate to them. He pursues his own physical desires whenever he pleases. As the baby grows, he passes through a civilizing process in miniature. Those social ideas which it has taken humanity thousands of years to acquire are instilled in him by his family, his nurse, and later his teachers and friends and all who come in contact with him. It is in this growth from childhood to manhood that both criminals and respectable citizens are made. As the child is taught to adjust himself to his family and later to his friends, so will he react in general when he grows up. Psychological studies of some habitual criminals have revealed that their constant warring with society was in reality a symbol of the hate they once felt in the family circle—for a harsh father or an older brother. We have all laboured under the fallacy of confusing the criminal with the prisoner. All criminals are not prisoners. Unless the picture is representative of the uncaught as well as the caught, the composite picture of the criminal in society cannot be accurate. Blindness, wilful or otherwise, in face of this truism has vitiated many enquiries by scientists themselves as we shall later see.

We have taken greed and considered those who are ruled by it in the different walks of life. Let us take sex, another universal instinct. I have dealt with problems connected with it in a separate treatise. Its potentialities as a source of crime are almost unlimited. In India the matter has almost been a taboo and statistics are impossible to get. We have, however, no reasons to suppose that crime on this score is absent here, human nature being what it is every where. Nor do we expect our readers to gloat over figures in the West only because men and women there have facilitated scientific enquiry by being more candid. The number of illegitimate births in the United States is, according to Morris, at least 70,000 per year. Abortions are estimated as between 500,000 and 2 millions. These involve parties and even physicians in the criminal act of causing abortions. "The facts seem to indicate," says Morris, "that our governmental machinery has sorted out for imprisonment chiefly the dull-witted, the unpleasantly eccentric, or the crude blundering operators—who have aroused fear or hatred against themselves by their nastiness and violence, but has been neither so active nor so successful against the suave, the shrewd, the tricky criminals, who are among our friends, nor against those whose crimes have been limited in their direct effects and shielded from public view." Morris has drawn up a staggering list of gentlemen-criminals who go about, legislate and demand drastic executive action against their less fortunate equals.

Sec. 7. The criminal not a different man—The plight of the criminal—The criminal again a reality—Instances of habitual criminals—Criminology and the individual criminal.

Now let us, for a moment, consider the plight of this less fortunate man of society, the criminal. We must remember he is a member of society. He is somebody's brother and some other man's son. His life is bound up with love and affection as everybody else's. In other words, we cannot think of society *and* the criminal as though the two were separated by a chasm.

The following is from a picture drawn up of the other side and a great deal would apply to conditions in the past.

The man is first suspected and then taken to the police station. There he is sometimes photographed but always closely questioned as to his family record and his past, before he has had an impartial hearing or trial. He is handled by officers who may do the best they can but who by lack of proper training and experience and for want of time are not the best persons to study human nature aright. From the police station, he is lodged in jail where is huddled together a great mass of human wreckage, a large part of it being the product of imperfect heredities acted upon by unfavourable environments. Here he learns things he never knew before. He is fed like the animals in the zoo. There are prisons in which the jailor makes what money he can save by underfeeding the inmates. In a short time, the prisoner's misery and grief turn to bitterness and hate,—hatred of the jailor, of officers, of society, of existing things, and of the fate that overshadows him. Every one believes him guilty from the day hands are laid on him. The black marks of his life have been recorded—in schools if any, at police stations and to the onlooking public. The good marks are not there nor are they anywhere wanted. If he is let off on Police report, he goes with perhaps ineffaceable scars. He has registered his name in the black-book. If he is to be tried, he faces an unequal ordeal. The state's attorney is there with experts, detectives and the eagerness of one who is interested in only landing him in jail while his starving family has perhaps been looking from door to door for a lawyer who will appear for him at a nominal fee. With a huge machinery set up against him, it is only with considerable trouble and expense that he can sometimes escape.

After he is safely lodged, the public has no more use for him. His head is shaved, he is garbed like a prisoner, is measured and photographed so that he may easily be located. Change of name or locality will now be of no help. He works and lives under lock and key, like a wild animal eager to escape. He knows full well that his length of term depends upon officials whom he cannot see or make understand his cause. He may get small extensions much more readily than remission. No state would spend enough money to employ men and aids sufficient to build him up.

As all things end, the prisoner also ends his term. He is given, at places, a new suit of clothes which betray their very origin. His heredity and his hard environment had put him in. Now the state has done with him, he is free. But there is only one place to go. Like any other released animal, he takes the same heredity back to the old environment. He is a marked man and a watched one. He finds his family ruined, his home shattered and when he looks for work, every one around looks him up and down and shuns him. When a crime is committed in the vicinity, he is the first person called upon to explain how it occurred and point out who did it, if he was not himself the offender. He is gathered and shown to the inmates for identification. Perhaps he is identified, perhaps he is not. There he remains famished and helpless to be made a scapegoat for the next crime. He has his shadow following him. And if he be an innocent victim, what has society to say ?

Suppose the criminal turned round and exclaimed, "Tell me, in the name of God, what exactly am I to do with myself ? If this be justice, have you not in the past shed blood and considered even that justice ?"

Society did not answer such questions nor did it pause to do so for a long time past. Every one hated the criminal and wanted him to suffer. No one wanted to find out what impelled the man to commit crime. Still less did he pause to think, "Has he a father or a mother, a wife or children? How are they affected by his fall? Everybody forgot that the prisoner did not drop from heaven alone but had a family large or small. In some cases he may have been an auxiliary member but in many he was the supporting one whose fall reacted on his family disastrously. Perhaps before he had been put inside the jail, the family had borrowed or raised funds by selling whatever it owned to provide for his defence. Day after day they visited the *Hajat* whispering to him, consoling him or making enquiries. At the trial, they watched proceedings in a dazed, bewildered way. To them at least, the man at the bar was not what he was painted to be! If he was convicted and he went to prison for a length of time, month after month, the faithful family, a mother with tears, a wife stunned and weeping, little children down to babes in arms, would go to see him for and an hour accross the bars and in open view of the guards! The weeks ran into months and the months into years and still many of them kept up their hopeless vigil, some already driven to drudgery, some to crime, some to destruction for the man whom the state had punished so that society may improve ! It was safe to say that the state ruined at least one other life for every victim in prison. Society finished with sending the man in, it seldom thought of the disruption of those interested in him outside, of the boy that had to leave school, the girl who went out begging and the wife who led a hard existence, famished and ashamed !

In the few lines above, I have merely adapted the picture painted by Darrow in his book and he had called attention to very many other things as pitiable. It was by no means a mere pro-criminal and sentimental plea, it had the tragic touch then apparent to every citizen who had contributed a member to prison or had seen a family so afflicted close at hand.

A great deal has been done since the picture was painted, by way of mitigating hardships, granting remissions, affording after-care, etc. More has, however, to be done as we shall see in due course.

And now let us hear society as against the criminal himself. The criminal is not a mere creature of prejudiced fiction but *is* a grim reality. He is there lurking at dead of night and perhaps at all convenient hours to break in and carry off or do other mischief. He is there in every guise, among friends, among foes, in shadowy garb. Who committed the crime of last night, yesterday, the week before and the month gone by ? Casual men and women who could not rise above temptation, habitual ones who have been repeating operations finding none better. The trouble and expense at which society is able to discover them, when possible, and the interminable technicalities of Law that stand in the way of bringing them successfully to book are too well-known.

I have spoken of the casual criminals who lurk about in all places and in all walks of life. Let us now take one or two cases of the habituals.

As I look into registers at a police station, I come across several history sheets (criminal biographies). They relate to local criminals supposed to be under surveillance or watch. There are many who would look almost incorrigible. Here is one, at a small village at Parasuram, Noakhali, one Sen, whose career in crime may be interesting. He is the son of a retired Assistant Sub-Inspector of Police whose name we had better not quote. He was born in 1912. In 1926, he stole away some money from the cash-box of his father and took some more from a friend of the latter. He then went over to Rangoon to his elder brother who was serving as a booking clerk on Burma Railway. We next find him before the Court in a theft case. This was in January, 1928, and he was released after due admonition. In July, the same year, he was hauled up at Feni, Noakhali, on a charge u/s 457 I.P.C. (house-breaking) and again released u/s 562 Cr. P.C. on probation of good conduct for one year. One month later, he was concerned in two cases of theft of clothing at Chittagong and was convicted in both and sentenced to four months' rigorous imprisonment and also ordered to notify change of address, etc., u/s 565 Cr. P.C. for 2 years. He was also given two months' rigorous imprisonment in the case of Feni detailed above for having violated 562 orders. In March, 1929, which should be soon after his release from jail, he was convicted u/ss. 411/75 I.P.C. and given rigorous imprisonment for 3 months with 565 orders for one year, at Chandpur. In this case, he stole a cycle. He then went back to Rangoon and was convicted there in October u/s 457 I. P. C. (house-breaking) and given twenty lashes. In December, i.e., two months later, he was sentenced to seven months' rigorous imprisonment for theft, two months' more for another house-breaking and six months' for yet another house-breaking. Towards the early part of 1930, he was concerned in a case under the Explosive Act and expelled. Next in April 1931, he was found active in Calcutta. He was sentenced to two years' rigorous imprisonment for having a loaded revolver without license, six months' for house-breaking and one year's for theft of shirts and coats. That was not all. He was concerned in another case of theft of clothes and ornaments and sentenced at Alipore, the next month, to six months' more. This landed him in jail for some time and not long after release, we find him at Feni concerned in a suitcase theft in June 1934. He was also concerned in a breach of trust case in Chittagong about the same time having decamped with a passbook and money kept with him for deposit. He got one year's rigorous imprisonment in the first case and got off on probation in the second. In May 1935, which cannot be long after his release again, he was sentenced at Alipore for theft to 18 months' rigorous imprisonment. He was released after the term only to return to jail in July 1937, from Comilla where he was sentenced to two years rigorous imprisonment for snatching away ornament from somebody's person. He is now (1938) in jail, an accursed person who did not, perhaps, amass even a total sum of a hundred rupees in all his known exploits. He was convicted thrice beside those mentioned for violating 565 orders. Here is undoubtedly an enigmatic person, perhaps crazy to the core, who refuses to be cured. A police-man might wonder why he was not committed to the Court of Sessions at one of the later trials to receive a long sentence. Perhaps that would have deterred the man, he may honestly wish ! But would it ? Goodness only knows !

Let us study another case where the superior aid of the Court of Sessions *was* invoked but to no effect. Here is an ordinary cultivator of Feni, Noakhali. To save unnecessarily long narration, we shall present his career in a tabulated form. Here it is.

One Rahman son of some Mohammad of a village in Feni, Noakhali. Born 1874 ;

father a day-labourer ; married early and fell in want. Family begged.

1. On 9-4-00—theft of a coat, 4 days' rigorous imprisonment.
2. On 22-3-01—theft, 30 stripes.
3. On 3-8-04—attempted theft, 1½ years' rigorous imprisonment and 565 orders for some years.
4. On 15-5-09—violating 565 orders, 3 days.
5. On 10-5-11—theft of clothes, two years and 565 for 3 years.
6. On 22-7-13—house-breaking, one year and 565 for 3 years.
7. On 10-12-19—housebreaking by night, committed to the Court of Sessions, *ten* years' rigorous imprisonment and 565 for 3 years.
8. On 14-12-28—again, breaking open closed door and snatching ornaments, seven years !
9. On 16-9-35—pick-pocketting, three and half years and 565 for 5 years more. Is now (November, 1937) in Jail.

Both these cases make interesting study. In the first, Sen has refused to reform and has been dealt with with short but almost continuous terms ; in the second, Rahman has had very long spells as well. Lest the reader should imagine that these are very rare instances which I have brought together by anything like a straining search, I can say that almost every thana has on its records men like these. Both these men have been practically confined in jail all the time only to come out and go back. In both, the total amount collected in known exploits was not more than a few rupees in the aggregate. Yet they carried on their perilous jobs ! Punishment has been perhaps more than a modern man with even extreme vengeance could have wished. The exasperated police troubled more than they can bear on their scores might wish their extermination, the infuriated mob might attempt a lynching but there they are not knowing what to do with themselves !

Are they maniacs ? Should the policeman hand them over to the psychologist ? Are there any other ways and means for salvaging this social wreckage ? The answers to these and many other questions are sought to be answered by criminologists so far as individual criminals are concerned.

"All said and done, the criminal is a social liability. He is on the wrong side of the ledger. The business of the criminologist is to convert him from a debit to a credit. This, however, is a new orientation; and one that may not meet with the wholehearted approval of a Liturgy which still offers up prayers 'for the punishment of wickedness.' "

Sec. 8. India, epitome of the world—Conditions of crime in India—Difficulties and shortcomings of the administrative machinery—Lack of progressive thinking—Individual and collective research called for.

India is the epitome of the world. In physical features, it is rich and representative of all that is great in the world. It has a history of which one can be proud and a civilization worth the name. Indian criminality reflects the phases of all grades of civilization. We find the fiercest violence as among the frontier savages and all grades of crime down to the subtlest craft of the trickster. Psychic as our civilization has been, our professionals lack scientific tools but make up the deficiency by their skilled handiwork. Only in June last year, (1936) I led a party and captured one Khalifa of a village of police-station Fulpur, district Mymensingh, actually in the process of forging ten-rupee notes. The find was enormous, as many as 220 notes being found in one bundle all in process of making and a large number of paper pieces cut ready to size. He was an old man of seventy and only knew a little Bengali and his tools were common knives and scissors, pieces of bamboo, wax, common chemicals and so. His output was immense as notes of the same make were traced over a great portion of North and East Bengal. This illustrates how craft is perfected and many other instances can be read in "The Indian Criminal", an uncritical but interesting work by H. L. Adam. S. M. Edwardes in "Crime in India" reviews forms of crime prevalent in India generally. There are known criminal classes and tribes in India about whom much has been done to control and to reclaim.

The criminal administration of India is, by the very nature of India itself, beset with difficulties. This I must say without any propagandist zeal in favour of the existing administration which, as every where else, has its short-comings also. In the very first place we may note that the people are composed of races more diverse from one another in their language, customs and leanings than any to be found within the boundaries of Europe. While many are in a state of civilization which will bear comparison with that of western countries, there are others who, habituated for centuries to a life of disorder, are only restrained with vigilant watch from resorting to their predatory habits at the expense of the peaceful and law-abiding sections of the population. The nature of the social friction thus represents phases characteristic of widely separated epochs in the history of human development. The vast areas and the lack of good communications often render pursuit of offenders abortive. The appalling illiteracy of the vast majority of the people only precludes it from intelligent co-operation in the matter of keeping of order and detection of offences. The inherited tradition which has come to give the Police a bad name has engendered public apathy and suspicion and is one of the most formidable obstacles in the way of successful police work. This has unfortunately almost negatived the assumption on which the laws in force in India were based, viz, that the man in the street is actively on the side of law and order as against the criminal. The past conduct of the police may have given some cause for such misunderstanding but, at any rate, whatever they have achieved has been against such odds and many more.

On the other hand, there is so much to be done in every field. There seems to be very little progressive thinking. In spite of there having been a few able detectives, the investigating staff is like the old quack who cures without knowing or caring to know much of his profession. The personnel clings to old local traditions and is antagonistic to new ideas. The strides made in other countries in every field of criminal research are neither known nor heeded. The inadequate and out-of-date methods continue. We continue working in our groove without taking serious cognizance of reforms elsewhere adopted.

Bureaucracy is almost a curse in this one respect at least. It ensures tenure and stifles progressive thinking. Many men engaged in the various branches of criminal administration including Judges, Police officers, Jailors, etc., are honestly convinced, with a sort of fatalistic pride, that they are only to carry on and manage a set of things as efficiently as they can. They relegate reflection to theorists and faddists not knowing that the world proceeds apace. They work the existing regime as a matter of course.

There is, of course, the eternal antagonism between theorists and practicians and the pity is that they seem to deride each other unnecessarily. The intellectuals are said to be men living aloof from responsibility, those devoid of the qualities necessary for leadership and practical organization. They are said to be planning everything and never achieving more than a plan. The so-called administrative type considers its imaginative limitation as a necessary virtue for success. It considers thinking as a drag on efficiency. Perhaps these people are partially right but they are necessarily narrow in their outlooks. Thinking men are primarily necessary in the human adventure, because they build up a sound diagnosis of events, they reveal more and more clearly and imperatively the course that lies before the race, they have an eye on the distant health, wealth and happiness of mankind.

The real fact, unfortunately, would be that the unthinking bulk of the personnel is mostly in ignorant bliss. Take, for example, the question of professional studies. If we are at a loss what to read or if we can think of nothing which we desire especially to read, it is as well to ask ourselves what we care most to learn. It follows necessarily that every man should master the books which relate directly and indirectly to his profession or business in life. If a man is alive to any subject whatever, it is to his chosen occupation in life and to whatever promises its easier working or more successful issue. If a man has something to do day by day in which he strives after the skill which leads to success, he can do nothing better than obtain all the enlightenment he can from books. By extensive reading, he can gain an insight into the secret of certain and progressive success. In this way he will elevate his calling from being a slavish and enslaving drudgery, into a rational discipline, not only for immediate profit or recognition but for the love of the labour itself.

We should not be slaves of systems; systems are to be evolved by us. As a matter of practice, however, we find that we can safely exchange hands from one office to another and the system runs by itself. What is wanted is imaginative leadership to steer clear of enslaving drudgery.

Not individual leadership only. We must encourage originality on the part of every man. We learn it from Mr. Ford who has elevated his organization to almost the highest pitch of efficiency, how he encourages the lowest worker to come up straight to him if the worker has a suggestion for improving things even by one cent. To my mind, every volume of Police Regulations in India should be prefaced by an appeal for ideas from everybody who has anything to do with the rules, not excluding the public, printed in bold type. The appeal or notice should stress the fact that the efficient organization of the Police depends entirely on the *honest* working by officers and men of rules and regulations in force or that may be issued from time to time. Yet it must never be supposed that these are all perfect. There is a better way for everything that is being done and it should be a matter of individual and collective research as to how things could be better managed and of frank outspokenness as to what difficulties are actually felt in the honest working of a rule or order. This will provide for elimination of "dead letters" and gradual evolution for the better. All members of the force should thus be asked to give some thoughts in this direction in the ordinary course of their duties. The general principles underlying such critical but constructive examination of methods should be, among others,

(a) observation of what is there,

(b) scrutiny as to what is of worth,

(c) comparison with methods elsewhere and in analogous professions,

(d) imagining what could be better.

It would be for the higher officers to test the new ideas in practical fields and adapt whatever such tests prove worthy.

Since this was written, the Bengal Government has taken steps to invite suggestions by opening a "Suggestion Box" to be affixed to each office to enable subordinate officers or other people to put in suggestions occurring to them in any matter without being exposed to ridicule. Names can remain attached in sealed covers to be opened only in the event of the suggestions proving acceptable. This should prove useful.

Had it not been for the Police reforms of Peel, the Force in England might have continued to live an unwanted existence still. The reforms were due to the impetus given by thinking brains. There were Bentham, the greatest critic of legislation and government of his day, Colquhoun, the indefatigable fighter for reforms, Romilly who devoted himself to mitigate the severity of the criminal law and a host of others who did the thinking and sowed the seed of reform in the public conscience. The seed took a period of thirty years to germinate before Peel and the Duke of Wellington found it sufficiently strong to transplant and provided the necessary cultivation in the shape of legislation.

The Police is not however the only agency that administers criminal justice. Magistrates, judges, lawyers, jail officers and a host of others have their due parts. They have a great deal to learn from criminology. "Not a week passes", says the great scientist Haeckel in his "The Riddle of the Universe", "in which we do not read of judicial decisions over which every thoughtful man shakes his head in despair; many of the decisions of our higher and lower courts are simply unintelligible. We are not referring in the treatment of this particular "world-problem" to the fact that many modern states, in spite of their paper constitution, are really governed with absolute despotism, and that many who occupy the bench give judgment less in accordance with their sincere conviction than with wishes expressed in higher quarters.......

Most of their errors indeed, are due to defective preparation....... They have but a superficial acquaintance with that chief and peculiar object of their activity, the human organism, and its most important function, the mind. That is evident from the curious views as to the liberty of the will, responsibility, etc., which we encounter daily....... Most of our students of jurisprudence have no acquaintance with anthropology, psychology, and the doctrine of evolution—the very first requisites for a correct estimate of human nature."

Sec. 9. Objective of this study—Its method—Its materials.

The objective of this book is the study of the important problem of crime in all its aspects. It is meant to draw the attention of the public to it and invite thinking brains to eliminate much that is waste and antiquated now in the treatment of criminals. Under the new constitution, India will attempt many things but nothing else will make up for a neglect of this eternal problem. The whole scheme of human conduct is so complicated and becomes more and more so as life itself becomes more complex, that society will have to be more and more alert to combat crime. It was Richard Washburn Child who sometime ago warned the American public that it was headed "not for more law enforcement, but for less ; not for less crime but for more." He was the spokesman for a nation-wide campaign for suppression of crime by more and more rational methods and was successful in awakening American citizenship to interest itself in the problem of crime. It requires an all-round attack. Science will have to reduce undetected cases. For methodical work, we may look for a day when Federal India will institute a permanent state department of Criminology with a research bureau. This sub-continent will then not only mitigate its own crime but also by handling the immense materials for study contribute to international thought about crime.

Eminent criminologists abroad who have written on principles of criminology and indicated their relation to local conditions have, in many cases, omitted the very mention of India. Their treatises, mostly very costly, are instructive to only students of criminology. They will appeal less to the Indian public and those connected with the Criminal Administration as they have little or no bearing on Indian conditions or problems.

This treatise is also intended to offer in its pages a comprehensive but concise view of what has been done and thought about crime in all ages, incorporating also as up-to-date information on the subject as is available. It can thus be referred to by the students, lawyers and officers concerned in the administration of criminal justice. I shall have much to say about the Police, its evolution, progress and future and what will make for its increasing social utility. The keen policeman, I hope, in his spare time, may perchance glean some crumbs of knowledge from its perusal.

The method of writing this book has been that followed by the criminologists themselves. It is not to be looked upon as either a departmental note or a pro-criminal propaganda. It is pursued with a scientific detachment of mind and my only anxiety is that I present it in the right manner. Emotion has nothing to do with the attainment of truth. The interests of truth are far from being promoted by the conditions and vacillations of emotion ; on the contrary, such circumstances often disturb that reason which alone is adapted to its pursuit. No cosmic problem is ever solved or even advanced by the cerebral function we call emotion. In the matter of adjudicating between society and a section of it on grave issues, the utmost dispassion must be evoked.

When I have differed from any writer, I have done so with the utmost deference. I expect many of my readers will be able to help me with constructive suggestions.

The materials of this work have been gathered at a great labour from works, magazines and notes of a very wide range. The collection has involved topical search all over and the bibliography handled would require pages for even a mere mention. I refrain from doing this because the reader can easily refer to a handy volume brought lately up-to-date, titled, 'A Contribution towards a Bibliography dealing with Crime and Cognate Subjects,' by Sir John Cumming. This useful contribution is indeed very wide and includes works which are not available in India. Apart from those in this list, I have had to refer to books of general interest as the complete bibliography would trench on the one hand on the domain of psychology, and on the other on the domain of law. It overlaps the spheres of the physician, the lawyer, the statesman and the social worker. It is almost impossible to include in the text a biographical sketch, however short, of every writer whose name occurs therein. I shall, however, attempt adding microscopic sketches of the more brilliant of these when a name occurs for the first time. This will familiarise the reader with the great thinkers in this field. I must also add that the 'Police Journal' is publishing thoughtful articles on various aspects of crime and I have largely consulted its issues for the latest information on some of the topics.

Sec. 10. Is crime increasing? The future of the human race and crime—Wells's optimism—Conclusion.

Before concluding this chapter, let us refer to a question that may very well be anticipated. It is : Is crime increasing ? "The increase of crime," says one, "has been the prolific theme, alike on the part of pessimists and optimists, both of whom generally approach its oracular altars with 'prejudice aforethought,' and shape their conclusions accordingly."

Ellis draws attention to the fact that crime is steadily rising.

I could quote many other writers who seem to dwell upon the increasing volume of crime with alarm. There is again the theory of fixed quantity of crime of Ferri. Drahms and Hall contend that a change in the direction of minor offences rather than serious ones is noticeable. A number of factors makes for unreliability of recorded data. Much depends on what we call crime and what proportion of it is actually reported. Taking it in its wider sense, crime would make imagination reel, if we think of "the beast in man in all circles and in all strata of society." "It is not only in the prison that you find criminals but we are all such if we understand by this abusive phrase the expression of tendencies to enjoy things ourselves in case of need to the detriment of others." This reminds me of the theological concept of sinning man. The tendency of the present age, however, seems to incline from more heinous crimes to less heinous offences. The real position would thus be that quantitatively crime in the wider sense has been increasing. In India this is explicable by the annual increment of population and the increasing complexity of civic life. This should neither be a cause for alarm nor an excuse for belittling administrative achievement.

In concluding, I shall, retrospectively, quote Burke. He says, "The annals of criminal jurisprudence exhibit human nature in a variety of positions, at once the most striking, interesting and affecting. They present tragedies of real life, often brightened in their effect by the grossness of the injustice, and maliginity of the prejudices which accompany them." As for the future, we can hope for the better, provided society continues to be alive to the necessity of combating crime on all fronts, preventive, punitive, reformative....... The intensity of anti-social instincts and any innate defect of self-control can be checked only by the process of sublimation or education in high ideals and by a modification or change of environment. Only a fraction of the money spent in human destruction, e.g. in War, would give an education adapted to the individual even to the most defective. It would make life easy by making environment easy.

To share the robust optimism of Wells, we may as well await with hope the World State which will have broken this cramping circle of interests from every human being and, by ensuring plenty and controlling overpopulation, taken all the interest of the food-hunt and the food-scramble and all the struggle to humble our human competitors, away from the activities of the individual brain. Only then may all the visionary picture of the rosy future of mankind come true.

"In the last analysis," says Parmelee, "it may be said that crime will disappear to the extent to which the normal life becomes possible for mankind. By the normal life, I mean the spontaneous expression of human nature. In any organized society this spontaneity must be limited by at least a small amount of social control. But in the existing organization of society this spontaneity is limited far more than is necessary for social welfare.

"The prevention of poverty and other economic evils, and the abolition of the restriction imposed by institutionalized religion, conventional morality, and antiquated repressive laws, would increase greatly the scope of the normal life for human beings, and would obviate to a corresponding degree the occasions for anti-social conduct. So that the great forces of science and of statesmanship in our civilization should be directed towards attaining the highest goal of social progress which will render the normal life more feasible for all mankind."

In the meantime every man who loves humanity, or cares for the future, who believes that social institutions may be changed for the better, that human conditions are modifiable, that man can control his destiny to a greater degree, should realize the enormity of the problem of crime and do his part in its solution.

PART I.

THE CRIMINAL.

CHAPTER II.

THE NATURE OF THE CRIMINAL.

Sec. 1. Popular conception of the Criminal—Vague and indeterminate.

In taking up discussion of the criminal before crime, I owe a word of explanation. It might look as though we were dealing with the functionary before the function or the agent before the act. The practice of criminologists differs with respect to the order of topics and many have taken up study of crime before that of the criminal. Many others, again, have done as I propose to do. In the evolution of ideas and concepts in man, strict sequence or orderly progress has by no means been the rule. Punishment has come before prevention; investigation and detection in the proper senses have put in belated appearance. Although lately, writers have emphasised this or that as cause of crime, crime, in the old order of popular history (or story), was considered due almost entirely to the traits of the criminal himself. I shall presently show this as I deal with the theories about the criminal chronologically.

The word "criminal" has been variously defined by writers. The sister word "crime" has also variously been interpreted at different periods and in various countries. On the one hand, the word, 'criminal', has been used as extending to the whole of humanity, on the other, as denoting highly specialized or habitual wrongdoers only. Perpetrators of vicious acts for which Law does not concern itself are sometimes howled down as criminals. To my mind, the word itself is unhappy. It seems to indicate a *permanent affliction*, an *enduring attribute*, whereas even the worst criminal does not continue committing crimes all the time and has his moments of relief. Human life is an eternal amalgam of dross and gold. The criminal is not a radiating energy everlastingly giving forth criminal deeds or acts. He is continually being acted on by forces within and without so that between him and the saint there is a continuous exchange of places. We may call him diseased but not in the sense of a leper but rather of a patient who suffers from an intermittent fever. It is precisely this that encourages us to study him for, else, what could there have been for us but despair !

Before we come to scan the word further, we may review what has been thought about the criminal in the past. I must warn the reader lest he should form the idea that the theories below are either exhaustive or strictly chronological. I can only touch upon the more important ones among many and, as I have said, strict sequence is rarely to be expected in human thought. Germs of an idea often take form in one epoch, lie dormant indefinitely and come to life epochs later.

Sec. 2. Early criminals—The Theory of Possession—Accursed or depraved persons.

The story of man is a story that is still very imperfectly known. A few hundred years ago man possessed the history of little more than a few thousand years or so. All that happened before that time was a matter of legend and uncertain speculation. Every section had some fantastically precise fable to quote as to the origin of man. Over a vast part of the civilized world, namely, that covered by adherents of the three Mediterranean religions, Judaism, Christianity and Islam, it was thought literally true that the world had been created a few thousand years ago by stages in a few days. The Hebrew Bible was the authority corroborated by the Quoran and the facts were interpreted literally. Modern sciences have explored the field and the entire history of man and the world is being reconstructed. We shall have to consider these finds in due course but to speak of what people once believed and thought, we will have to go by the old order of history.

Thus, among primitive men, mankind were sharply divided into the good and the bad, the righteous and the unrighteous, the sheep and the goats. The black sheep were those that enraged the tribal god. A wrath or vengeance of unthinkable severity was supposed to fall on them. Sometimes, a whole tribe, just and unjust, was said to be punished for the fault of one member. Conversely one who had more misfortunes than others was considered as having incurred the wrath of God. The black sheep were therefore searched out and dealt with very severely by the leaders of the people. The criminal then was the unlucky creature who was either thought possessed by the devil or born as accursed and depraved.

An attempt was made to demolish the above doctrine in the Book of Job. Yet it persisted in various forms until recently. The English indictment as late as the nineteenth century not only accused the offender of violating the law, but also of 'being prompted and instigated by the devil and not having the fear of God before his eyes.' Criminals were regarded as unpardonable. Blasphemy, witchcraft, unbelief, etc., were punished with death. Crimes against man were considered secondarily crimes against God also.

The above theory which held good *in toto* or in part for a very long period in the past was eventually overthrown by what is known as the Classical Theory about the criminal.

Sec. 3. The Classical Theory about the criminal.

This theory is associated with two immortal names,—those of Beccaria and Bentham. Beccaria (Cesare, Marchese De, 1735-1794) in 1764 published anonymously his *Dei Delitti e delle Pene* ('On Crimes and Punishments') in which he argued against Capital Punishment and unnecessary torture in punishments generally. The work was welcomed by the French school, commentaries were published by Voltaire and Diderot and it greatly influenced subsequent reforms. Beccaria was among the first to advocate the influence of education in lessening crime. In 1768 he was appointed professor of Political Philosophy at Milan, his birthplace and in 1791 he was made a member of the Board for the reform of the judical code. Bentham (Jeremy, 1748-1832), the English writer on jurisprudence and ethics, was known as the greatest critic of legislation and government of his day. Among his volumes, those that deserve mention in connection with our present study were Rationale of Punishments and Rewards (1825), Introduction to the Principles of Morals and Legislation (1789), Discourses on Civil and Penal Legislation (1802) and a Treatise on Judicial Evidence (1813). In all his writing and philosophy the doctrine of utility was the leading and pervading principle. In Mill's words, 'he found the philosophy of law a chaos, and left it a science.' He was the philosophic pioneer of Liberalism and of Radicalism.

The Classical Theory espoused by these two and other subsequent writers may be traced to the theory of Social Contract which was supposed to explain the origin of human society. The wellknown treatise on the *Social Contract* (1762) of Rousseau (1712-1778) and a host of other literature on the topic expound ideas which profoundly moved Political Philosophy and became the war-cries of the French Revolution. The theory proceeds on the premise that the basis of society is an original compact by which each member surrenders his will to the will of all, on the condition that he receives adequate protection or defence. Its ideal demanded a republic with universal suffrage, and proclaimed the doctrines of liberty, equality and fraternity.

The Classical Theory may also be taken to embody a reaction to judicial extravagance, cruel sentences and preferential treatment of delinquents. Based upon freedom of will and espousing the doctrines of equality of men, it declared that all who committed the same offence were subject to the same punishment. There was to be no Brahmin or Harijan, no Lord or Commoner in the eye of Law. The criminal was looked upon as one of the generality of an undivided mankind who had but succumbed under stress of temptation and was not otherwise distinguished. Punishment was solely to be deterrent. Man was considered as a free moral agent. Beccaria in summarising his own work, said, "From what I have written results the following theorem, of considerable utility, though not conformable to custom, the common legislator of nations :—

That a punishment may not be an act of violence, of one, of many against a private member of society ; it should be public, immediate and necessary, the least possible in the case given, proportioned to the crime, and determined by the laws."

The Theory had its merits and did react violently against judicial whims, discriminate treatment of the priestly class in the various religions or the influential aristocrats in different societies, and established the *rule of law.* This was all very well but it erred on other scores. In placing the emphasis on an evaluation of the crime, it thrust the criminal entirely out of consideration. Infliction of similar punishment on all persons is really unjust. The doctrine of pre-existing freedom of the individual and the surrender by choice has been shaken by subsequent scientific research. On the subjective side again the Classical Theory asserted that wherever an act was willed there was also free choice. This confused volition with freedom. Potential freedom hardly supplies the decisive impulse—a real and available motive counts a great deal more. The doctrine of freedom of will in the way it was conceived also suffered reverses as studies in heredity developed. The conception of equality before Law must be taken to mean equality of the degree of criminality in estimation of which prevails a number of conditions over and above the objective standpoint. This theory, however, brings 'together in perilous, promiscuous association first offenders, habitual criminals, men blinded by sudden passion of the moment, thorough degenerates and chance criminals, etc.' By providing the same punishment for those who may claim attention and sympathy such as juvenile criminals spoiled by a vicious environment and for those who excite aversion such as the professional and hardened criminals, the Classical principle violated the common instincts of humanity and charity. *It minimised risks of the habitual degenerates.*

Sec. 4. The Neo-Classical Theory

A subsequent school adopted the Neo-classical Theory and observed that there were differences among criminals and similar treatment would really be unjust. This is but a modification of the Classical Theory designed to bring law into line with the real facts of life. It suggests that repression should be adjusted to the degree of freedom of accused at commission and evidence should be allowed to be adduced for want of it. Rossi, (Pellegrino,—1787-1848) was an exponent of this. A distinction is thus made between crimes premeditated and momentary, those committed by children and insane persons and those by competent adults. This group of writers placed reform as one of the purposes of punishment.

Sec. 5. Lombroso's Theory of the "Criminal Type."

A complete reaction to the Classical Theory was marked by Lombroso's theory of the Criminal Type. We shall study this theory at some detail because of the elaborateness with which it was advocated by the sponsor and his followers and the violent death it has met at the hands of unsparing critics. I have given a short account of this genius (Lombroso) in the introductory chapter in connection with the history of modern criminology.

Lombroso became interested in this study in connection with his duties with Italian prisoners. He made many postmortem examinations of deceased prisoners in addition to what he did by way of comparing *the physical and psychical* anomalies of the huge number of prisoners to whom he had access. The works of Lombroso *are fairly popular despite the many attacks on* his theory itself. The materials sifted by him were voluminous and his new ideas and captivating audacity attracted admiration.

The seeds of his theory were to be found in the sayings of the old. One said, " Face is that *reflects like a mirror what affects the heart.*"

Solomon said, "The evil heart altereth the face." Aristotle correlated facial expressions with habits of vice and crime. Socrates is said to have recognized the abilities of Plato at first sight. The quasi-sciences of physiognomy, palmistry and phrenology have contended that mental faculties and traits of character, etc., can be gauged from the form, shape or size of body, palm or skull although scientists have refused to recognize these contentions *in toto.*

Lombroso compared the anomalies of the criminal with the organic peculiarities of savages and the lower animals. Then he traced the criminal instinct even in plant life. He found certain abnormalities in the physiological processes, organic peculiarities in the anatomical make-up, etc., etc., unusually prevalent among the criminals he examined. He thus formulated the theory that the type of the born criminal who is so constituted as to be organically impelled to crime is an atavistic phenomenon in civilized society. His theory rests on two hypotheses :—

1. That there is a tpye of born criminal distinguished from a normal man by organic and functional anomalies and peculiarities. All true criminals are thus believed to possess some

physical characteristics the existence of which is proved by anthropology and some moral characteristics the existence of which may be proved by psycho-physiology.

As a matter of fact, the picture of the criminal in the popular mind does roughly vary from that of a normal man. This may be due to novelists trying to describe the criminal in a hideous way, to the stage giving a distinctive mien to him or even to the theologians describing how evil acts eventually poison the whole organism and distort expressions in the case of sinners. Commonly these traits reflected in our minds are low, receding foreheads, beetling brows, distorted noses, protruding or unusual ears, bony faces, massive jaws, beady eyes, furtive glances and movements, stooping posture, or any other pronounced deviation from normality. The aversion which society has had for these degenerate signs in humanity tended to label them as characteristics of the Criminal Type.

Lombroso attempted to deduce such identification scientifically. Of many of his experiments, one is very interesting. He came to believe that a composite face made up of the dominant characteristic features of hundreds of criminal faces would give him a picture of the typical criminal. In order to secure this he superimposed the negatives of many photographs of criminals upon a common plate. He thought he thereby found a type but others hotly contested this.

Dr. Mercier (Charles), a writer of note on many aspects of crime, portrays in a humorous fashion the way in which Lombroso's school looks at the criminal. The criminal will be addressed much in the following strain :—

> "You are not as other men. You belong to a separate class of human beings. You are marked off from the rest of your race from your birth, and are devoted and pre-destined to a life crime. You are incapable of regulating your life according to the canons of rectitude ; they do not apply to you. Your skull is oxycephalic ; it is unsymmetrical ; its frontal curve is less, and its parietal curve is greater, than those of other men. Your forehead recedes ; or worse, it projects. Your chin projects ; or worse, it recedes. You have no wisdom teeth. Your ears are too large, they are too small ; they are misshapen. Your hair is thick ; your beard is thin. You are dark in complexion. You are unusually fair. You have a fixed look in your eye ; you have a gloomy stare ; you look like a bird of prey ; you have a singular air of bon-homie..............".

2. The occurrence of this type is atavistic. *Atavism* is the reproduction by hereditary trans-

mission of a distant type in racial development. An example of atavism within a short range would be the inheritance by one of predominant physical or psychic features from a great-grandfather instead of the two intermediaries. Lombroso concluded, as a result of a study of equivalents of crime among animals and among primitive men and of the traits and conduct of children, that this congenital criminal type is to a large extent atavistic. They revert to earlier human types and to pre-human ancestors of man. As to mental traits also, he concluded that the born criminal was morally insane or a moral imbecile. He attributed this moral defectiveness to the weak sensibility of the born criminal, which makes it difficult for him to feel sympathetically. The commoner types of less dangerous criminals he deduced by a sort of dilution. That is to say, while he would apply his theory in cases of the dangerous degenerates in its entirety, he would consider these latter (less dangerous types) as lucky in getting away with only part of the full affliction ! To resume quoting from Mercier, we would say to the criminal :—

"This being so, (as regards bodily conditions) we regard you as irresponsible. You are a criminal, it is true, but the fault is not yours. It is not in the habit you have formed of yielding to your passions. It is not in your self-indulgence, your laziness, your slavery to impulse, your selfishness, your cultivated lack of self-control. No ! It is impressed upon you by your inheritance. You, poor fellow, are visited with sins of your father and grandfather. You are a thief; a murderer, a violator, it is true, but this is not your fault. Your are a criminal, as Falstaff was a coward, by instinct...........".

Lombroso's theory has been amply criticised, rudely shaken and even demolished by his enemies. In 1899, he challenged his opponents to check up 100 criminals as against 100 normal men by way of a test for his contentions. The challenge was accepted but as the opposing sides could not come to an understanding as to conditions of the test, no experiment was actually carried out. Nobody now is uncertain as to what would have been the outcome of the test but the incident does show the zeal of the sponsor of the theory !

Dr. Baer gives a detailed criticism of the theory in his book, 'The Criminal'. It was completely demolished by Naecke in his dissertation on "The methodology of a scientific anthropology" in which he came to the conclusion that the works of Lombroso, "with their arbitrary processes, their exaggerations and premature conclusions, in no way answer to what one has a right to expect in a scientific work." Dr. Griffiths, a prison official began study of the English convicts and Dr. Charles Goring complemented him. The results were published in 1913 (The English Convict). They said :—

> "We have exhaustively compared, with regard to many physical characters, different kinds of criminals with each other, and criminals, as a class, with the law-abiding public...........Our results nowhere confirm the evidence (of a physical criminal type), nor justify the allegation of criminal anthropologists...........Our inevitable conclusion must be that there is no such thing as a physical criminal type."

Dr. Mercier also wonders how in this age such stuff could be swallowed. He also has not been very sparing.

Lombroso has some followers on the continent and Havelock Ellis still stands by him.

There are evident drawbacks to the theory which has been shaken to the very foundation by subsequent researches in the field of modern biology. To state some :—Crime is a social phenomenon and none is a criminal unless he commits an antisocial act. Mere tendencies to commit crime may not issue in action.

Human structure is so complex that it is difficult to determine physical boundaries of the normal. Even a perfect brain may be no index to mental health as defects may be due to microscopic changes in the cells of the cortex.

Sane criminologists who are interested in neither total demolition nor dogmatic upholding admit that Lombroso succeeded in emphasising the need for a study of the criminal rather than the crime. It is undoubtedly true that some persons are born with traits which make them peculiarly prone to commit crimes if their environment is conducive to criminal conduct and a part of the criminal class is recruited from this group. In spite of all, as Hans Gross puts it, if Lombroso had not existed, there would be a gap in the logical evolution of modern ideas. As a matter of fact, toward the end of his career, Lombroso did not believe that more than forty per cent of criminals belonged to the type he called the "born criminal". He felt obliged to modify his own theory and attribute crime to a dual source, atavism and degeneracy. The extreme view he held was certainly due to his dealing with hardened criminals confined in jails although they do not form even a small proportion of the criminals never caught, never tried or when tried, never convicted.

Sec. 6. The Environmental School.

The extreme absurdity of the original theory of Lombroso duly led to a reaction. The opposite school led by the well-known British Philosopher, Herbert Spencer, (1820-1903) and others advocated that all peculiarities, and indeed all properties and qualities, whether peculiar or not, of living things, must have one of two origins. They must be derived either by heredity or weight of circumstances. Criminals, however, are not born but made. Poverty, bad homes, want of proper care, etc., etc., all contribute to the making of the criminal. The blame rests more on society itself than on the individual delinquent.

Spencer perceived the possibility of making "evolution" the foundation of an interpretation of life, mind and society. He wrote volumes and the wide knowledge of physical science that he displayed and his endeavour to illustrate and support his system by connecting his positions with scientific facts and laws, have given Spencer's philosophy great currency among men of science.

As a matter of fact, the influence of social environment on the individual has always been recognized. Although great minds are seen having refused to succumb to adverse circumstances, the fact remains that these are only few and, unfortunately for humanity, a great many perfectly good materials are lost, thwarted or even corrupted by circumstances they cannot contend against successfully. Robert Owen (Social reformer, 1771-1858) said, "It is not man himself, it is his circumstances that form his character ; an unfavourable environment produces a bad man ; a favourable one a good man". According to Quetelet 'society contains within itself the germs of all the crimes that are about to be committed, and the criminal is only the instrument which executes them'.

Ferri (Enrico,-1856-1929), the Italian Criminologist and one of the founders of criminal anthropology, drew attention to the social factors of delinquency. In his law of criminal saturation, he avers, 'just as in a given volume of water at a certain temperature we find the solution of a fixed quantity of any chemical substance, not an atom more or so less, so in a particular social environment with certain defined physical conditions of the individual we find the commission of a fixed number of crimes.' Setting aside the insane and emotional criminals, of whom either group would constitute only a small percentage of the criminal population, the greatest portion of criminality is found to be due to social conditions.

The utmost that could be said against this school is that it overemphasizes the environment as against the factors within.

Sec. 7. The group of theories around the mental basis of criminality.

I shall group together the theories that have been advocated from time to time on the mental side of the criminal.

Garofalo, (Raffaele, Italian Criminologist,) traces the want of a moral sense in the criminal. He emphasizes the importance of 'moral degeneracy' in the production of criminality. In his view, character is once for all as fixed in the case of incorrigibles as are one's features so as to be impervious to all healthy influences of education or training. Society only supplies the victim and opportunity for the deed. So the typical criminal, according to him, is 'a man in whom altruism is totally lacking.' Such a man is characterized by complete egoism, and an absence of any sentiment of pity or of justice. "Hence, the same criminal will be thief or murderer as occasion arises: he will take life to satisfy his greed for money, to gain an inheritance, to rid himself of his wife that he may marry another, to put out of the way an incriminating witness, to avenge a fancied or insignificant wrong or even to exhibit his physical dexterity, his sure eye, his firm hand, to display his contempt for the police or his hatred for men of another class." In a sense, Garofalo seems to be speaking of the instinctive criminal, the thorough degenerate who has his sole pleasure in violating laws of rectitude. Undoubtedly his attempt to account for the great generality of criminals by this rigid description must be considered abortive. There may be a few scoundrels of the sort and even then there may be causes, other than he supposed, to account for their permanent fall from grace.

"Moral Insanity" theory—This school traces in the criminal a mental condition in which 'while intellect remains unaffected the moral sentiments are thoroughly lost.' This is characterized by absence of remorse. The mental condition has been used in the sense that it denotes an overthrow of the emotional sphere or the intensity of anti social emotions due to a vicious hereditary tendency. The criminal will thus lie, steal or injure and neither feel remorse nor be influenced by exhortation or punishment but yet he will appear to be quite sane.

"Moral Insanity" has given way to the phrase "Criminal Imbecility" which also presupposes an innate pathological character with immorality as a decisive trait. Men of high intellect, however, sometimes stoop down to crime owing to various influences and further, the standard of morality varies with progress of the human race from time to time and place to place. Thus there can hardly be any fixed faculty called the moral sense. If really there be a moral imbecile who is free from all forms of intellectual defect, he must indeed be very rare.

"Feeble-mindedness" has again been characterized as the cause of the fall of the criminal. This has been defined by the British Royal Commission (1908) 'as a state of mental defect from birth or from an early age due to incomplete cerebral development in consequence of which the person affected is unable to perform his duties as a member of society in the position of life to which he was born.' A set of tests has been devised to ascertain grades.

One writer in an article in the Police Journal titled "The mentally defective criminal" describes the various grades—idiots. imbeciles, feeble-minded persons and moral imbeciles. According to him, an *idiot* is a person so defective in mind, from birth or an early age, as to be unable to guard himself against the common dangers of life. An *imbecile* is a defective who does not rank with the idiot but is incapable of managing himself or his affairs or of being taught so. A *feeble-minded* person is above the imbecile in rank but requires care, supervision and control, for his own protection and the protection of others. A *moral imbecile* is above this last person but he displays some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect. This grading may look useful but seems to be too hair-splitting. Criminals are hardly found to fall in well-defined limits like these.

Criminal conduct may result from abnormal and pathological mental conditions but the theory of looking upon all criminals as feeble-minded can be easily refuted. Writers of the school have quoted examples to show how feeble-minded persons were concerned in crime. Goddard mentions many cases. An adult imbecile of 24 had a mentality of a child of 9 years. In August 1914, he was charged with having shot a lady for refusing to marry him. He confessed. Another murdered his former teacher and was absolutely unperturbed. He confessed and nothing would prevent him from confessing. All possible help was offered but he would accept none.

One of the experts who attended him remarked, "As between soup and safety, Jean prefers soup." T. H. Haines gives account of a feeble-minded murderer he encountered in Mississipi jail. This man was thirty-seven but with a mentality of a child of 5 years and 9 months only. He was unable to repeat four, number or value coins. From date of murder (of his father-in-law) to transfer to the penitentiary, he cost the country $ 2500.

These instances are instructive but only so far as that there are imbeciles who may fall easily into criminal ways. Cyril Burt declares that he cannot concur in the view that a feeble mind is the commonest cause of crime for in his experience, 'both facts and figures seem in recent years to have been wildly overstated.' It is inevitable in the light of even common experience that we should give up feeble-mindedness as a primary cause of crime in general. There are crimes which require brains such as forgery, embezzlement, frauds, coining, counterfeiting and these must preclude opportunity for, or ability to, the feeble-minded. The real truth would seem to be that the feeble-minded would fall an easy prey to evil suggestion and their inadequate judgment and defective foresight would expose them sooner than the more adroit of the criminals.

Phobias and manias, on the other hand, have been cited by some as fruitful sources of criminality. The extent to which lunacy contributes to crime has been studied at length by Dr. Mercier in his "Crime and Insanity."

Lombroso in his "Men of Genius" correlates insanity with one-sided genius and proceeds to explain the contradictions, errors and mad traits in men like Julius Caesar, Napoleon and others. H. G. Wells also places prophets, fanatics, pioneers, etc., in the same category and proceeds to show that the manifestations of these maniacs and phobiacs can be equally to the good or the evil of mankind.

There is a number of other theories held by a few or solitary writers, which deserve no more than a passing mention. The criminal is thus looked upon as one who has fallen away from society and has constituted himself as a centre of action. Social inadaptability or failure in adaptation to social environment would, however, be very indeterminate. No person can become perfectly adapted to the social system under which he lives. Every one violates moral, legal and social conventions to a certain extent and every person is abnormal in a certain sense. Nor has there been a perfect social system evolved yet. One writer, again, exposes the possibilities of imitation in the field of delinquency and gives undue prominence to the sway of examples.

We might mention in passing the conclusions of Dr. Goring whom we have mentioned in connection with Lombroso's theory. This Prison official undertook immense pains in elaborately studying a number of prisoners with a view principally to testing Lombroso's theory. He describes the physique of his criminals, records measurements of height, weight, muscularity, etc., at great length. He compares age, takes up vital statistics with regard to health, disease, etc. He takes up the mental traits of the criminal, possible forces of circumstances, influences of heredity and the like. This was stupendous labour indeed. His conclusion is that criminal men—those who have been convicted of crime sufficiently serious to be tried in a superior court (say, those that are tried in India in the court of sessions), do differ appreciably from the common Englishman—not like disease or health, not biologically or racially ; they differ mentally and physically but they do so not specifically but selectively. They are a separate class, but a selected class, and are different solely because they are selected. This has also been subjected to criticism by Parmelee and others. It is obvious that he again has confused convicts with criminals. He had great faith in the statistical method but it is evidently subject to various limitations. We shall deal with these further anon.

We shall now review these various theories generally and indicate the possible sources of divergence. It is also time that we should clear up our concept of the term "criminal" and then examine what the nature of the criminal can possibly be.

CHAPTER III.

THE NATURE OF THE CRIMINAL.—
(Continued.)

Sec. I. Possible sources of divergence of opinions—The criminal a fleeting personality—The caught and the uncaught.

The criminal, as we have seen, seems to have baffled the thinkers and eluded their grasp. The reason is not far to seek. It is because his is a fleeting personality—he seldom submits to a thorough examination or inspection at close range. He is here, there and everywhere—society has no means of segregating him or marking him off. A host of criminals we never see nor even hear of. Several, again, are arrested and set free. Many others are tried and acquitted. Those that are confined within the four walls of the jails, then, constitute but a microscopic percentage of a criminal population outside them. So the view taken of the criminal must of necessity be of a limited range. And this limited view is the main source of all this divergence.

Now, because every writer based his theory on some materials, however scanty, each theory has some element of truth. The physical sciences stand on better ground because inorganic nature affords us a surer scope for generalization from data observed.

It is, however, hopeful that critical studies in this field are continuing; from Lombroso onward more and more materials are being sifted with a view to basing conclusions on wider bases.

All looked at the same phenomenon but there was difference in viewpoints. "The same house looks quite different" says Mr. Parsons, "when viewed from the front and from the back. Your idea of it depends very much on whether you are collecting garbage or delivering the mail. A glance at the phenomena of crime may reveal a like difference in the general appearance of it when viewed from different angles." Opinions thus differed as thinkers contemplated this class of criminals or that. Lombroso's gaze was fixed on the highly degenerate habitual offenders. For him the lesser criminals were accounted for on the basis of a dilution of the criminal nature. Tom Osborne sees the criminal as a normal human being and only a victim of unfortunate circumstances. It is obvious that he views criminals from the normal end of the line.

Neither has a complete view. The intermediaries between these two extremes, in their turns, opine from their own angles. It is common knowledge how widly differing accounts are often given of the same incident by absolutely truthful eye-witnesses.

There has been the obvious fallacy in many cases of confusing the criminal with the prisoner. I have already said, the very word 'criminal' has a varying connotation. It would seem most useful in a sociological study, as Morris says, to *consider as criminals all those whether convicted or not who, intentionally or with the knowledge that it is legally forbidden or generally considered morally wrong, violate any statute other than a few quasi-criminal acts such as dealing with traffic offences not involving intent.* Unless the picture is representative of the uncaught as well as the caught, the composite picture cannot be accurate. Our discussions of crime and criminals hereafter will generally be on the scale of consideration here suggested.

On this wider plane, as I have stated in the introductory chapter, many so-called respectable citizens will have to go down with the gallery. By far the greater number that is sorted out for imprisonment or other punishment comes from the dull-witted, the unpleasantly eccentric, or the crude blundering operators who have aroused fear or hatred against them by their nastiness and violence but have perhaps neither been so active nor so successful as the suave, the shrewd, the tricky criminals, who are among our friends and acquaintances or who even fill the ranks of those who are there to hand over and deal with the former. Take the case of the poor who are not in a position even to envoke the aid of counsel as against those who can buy up legislators, influence intermediate law-officers, intimidate juries. Notice again the fact that the viewpoints of the various criminals are only peculiar to a very limited field of conduct. The bank-embezzler who readily justifies his act is no more likely to commit rape than is the bank president whose reputation for honesty may be unimpeachable. The man driven to murder by passion would be righteously indignant if he were suspected of being a thief. A follower of a certain professor would commit adultery with far less concern than steal a flower from another's garden. Morris has given a staggering list of gentlemen-criminals who harangue in favour of harsh action against their less fortunate equals. He has thrown light on the criminals of the *monde* as opposed to the *demi-monde*—the numerous but never clearly defined group of criminals whose social position intelligence and criminal technique permit them to pose as spotless citizens of repute. He enumerates among others the loansharks, the bankers, directors, speculating manufacturers making profits by questionable means, the grafters in business, the grafters in Public Service who seek and receive pay for doing a thousand and one legitimate and illegitimate favours, contractors who bill for one but substitute another thing, law-enforcement officers who break laws in order to enforce others such as in torturing for confessions and arresting and searching indiscriminately on a hit-or-miss basis.

These revelations tend to embitter social relations but are at least necessary for a more humane understanding of those criminals of whom we are treating.

In this wide view of things I am utterly at one with criminologists who assert that there is no proof available that criminals caught and uncaught are fundamentally different from the general run of the populace. In other words, we cannot think of society and the criminal as though the two were separated by a chasm. Sutherland states that 'there is little to justify the conclusion that criminals differ appreciably from non-criminals'.

"Every one", says Parmelee, "violates moral, legal, and social conventions to a certain extent. And this failure to become perfectly adapted is by no means the fault of the individual, but in part of the social system, because there has never yet been and probably never will be a system of society which is perfect. However, most individuals acquire enough knowledge and develop enough self-control to enable them to get along fairly well with their fellows, and to avoid violations of conventions of society so flagrant in their nature as to bring upon them severe penalties."

To quote from Sutherland again :

> It is highly probable that every person who is capable of self-direction commits crimes. Some people commit crimes frequently, others infrequently. Some commit more serious crimes with a definitely antisocial sentiment, others with no antisocial sentiment whatever ; some commit crimes with glee, others with apology, and others without awareness that they are committing crimes. Even regarding the criminals confined in prisons, it is not safe to generalize.

In stressing this, I am presenting none of a pro-criminal plea. I am only pressing the case for a better study of the problem of crime, the substitution of a sane and rational system of dealing with these fallen creatures for the impulsive, fitful or even vengeful one that society has so long adopted. Much is being done by criminologists and the problem is evidently too complicated to be left to the policeman or the jailor alone.

Sec. 2. The development of clinical studies—Growth of interest in the mental conditions of the offender—Nature of the Clinical Approach—The studies of Dr. Healy and others—Studies elsewhere—General conclusions.

We have seen how enthusiasts have proceeded to generalize from the few for the many and the mistakes they have inevitably made. The '*Expede Herculem*' theory is all very well up to a point and is intensely fascinating. It would be instructive, however, to confront a real prehistoric monster with its supposed counterpart as reconstructed in the light of the discovery of a bone !

The criticisms of their contentions have brought to light the necessity for further studies and the trend of modern thought is towards individualization of both study and treatment. 'Evolution' seems to be working from the simple forms of organism towards the more complex. Let us take bodily affliction from which humanity suffers. Although we have denominated some groups of symptoms as constituting different diseases, we have yet to call for medical inspection in each individual case, for a number of factors complicate matters.

The examination of the criminal in the light of criminal sciences was planned elaborately by the Italian school. Ferrero (Gina Lombroso) has summarised main points in her work, "The Criminal Man". Such examination is necessary for ascertaining extent of responsibility, probability of recidivation, for guidance of officers of orphanages, rescue homes and other institutions and for reformation of delinquents and determining the psychic and physical individuality of the offender. Among various matters that could be examined are

1. Past life, surroundings, etc.
2. Neurotic condition.
3. Prevalence of nervous diseases in parents and forebears—predisposition.
4. Existence of criminality in the family.
5. Profession.
6. Circumstances of the crime.
7. Intelligence—tests devised by Binet and Healy.
8. Psychoses—medical tests—there are instruments also.
9. Suggestibility—hypnotism.
10. Strength of smell—test Osometer.
11. General Muscular Strength.

Dr. Healy's schedule of data is also useful. It consists of about 8 topics, viz., family history, developmental account, nature of the environment, mental and moral development, anthropometric results (i.e. bodily measurements), medical examination from a neurological and psychiatric standpoint, psychological examination and lastly the nature and manner of commission of delinquency.

Dr. Healy's book on the individual delinquent contains a vast amount of valuable informations and is very suggestive of the diversity of criminal types and the great variety and complexity of the causes of their criminality. He made a careful study, in one instance, of one thousand young habitual offenders. He found 89 highgrade feeble-minded, 8 imbeciles, 81 of subnormal mentality and 69 suffering from psychoses which included insanity.

Bowers examined 100 recidivists, or incorrigible habitual criminals, in the Indiana State Prison and found that 23 were feeble-minded, 12 were insane, 38 were constitutionally inferior, 17 were psychopaths and 10 were epileptics. This was apparently a highly selected group.

Similar studies by Bronner, Spaulding Williams, Haines, Rossy and others yielded results more or less varying. Studies at Portsmouth Naval Prison during the World War, at Boston Municipal Court and other places have also yielded similarly varying results. Of 1000 studied at the Boston Court, 23 per cent showed feeblemindedness, 10.4 psychopathic personality, 3 epileptic and 9 mental diseases. Out of the 1000, 456 exhibited abnormal nervous and mental conditions. Parsons observes, "No one can look over this material without being impressed with the importance of mental abnormality as a factor in crime." "As yet", to quote more from him, "our tests are inadequate for that vague thing we call personality or character, but clinical methods are revealing more and more clearly the physical and mental basis of that instability, irritability, irrationality, or irresponsibility, which brings much friction between society and persons who manifest little other indication of pathology."

Parmelee observes :

> In view of this great uncertainty it is advisable not to arrive at any definite scientific conculsions, nor to take any practical measures upon the basis of any of these estimates......The facts......presented indicate the complexity of the mental causes of criminality...... As a matter of fact, there are more persons who commit criminal acts who are normal or almost normal. In fact practically every member of society is destined at one time or another to commit criminal acts, but the great majority are not caught at it.

This confirms our general conclusions at the end of the last section. There is no one cause of criminality. Criminal behaviour, like all other behaviour, is a continuously growing pattern of activity drawn by the interplay of many forces within and without the criminal person. When we say that congenital traits, mental defects, social environment, economic conditions or the like cause crime or make the criminal, we are only partially right. We shall study these various factors in relation to crime further ahead.

Sec. 3. The criminal defined—His nature summed up.

Who is a criminal? *Any man who wilfully perpetrates a deed punishable by law is a criminal.* This is one of the definitions. The word 'man' of course excludes beasts. The word 'wilfully' emphasizes that the action has to be intended. If a man walks into a shop and carries away an article mistakenly believing it to be his own, he commits no offence. If an insane man fires a pistol at random and injures somebody, he commits no offence for he is incapable of voluntary responsible action. 'Perpetrates a deed' includes 'neglects to do an act which is a duty.' The word 'punishable' includes cases where the guilty man escapes punishment also. It is a common mistake to identify the criminal with the prisoner. This definition does not make any distinction between petty offences and felonies, since all transgressions great or small, spring from one source, from the same psychological root. The criminality in cases of wilful perpetration of deeds small or great may differ only in degree but does not in kind.

This definition is so very wide that it will leave very few people outside its fold. It will be almost as difficult to find a sinless man in the old conception as a noncriminal man in the modern conception of this term. There will only be minor criminals and major criminals!

Some of the writers exclude quasi-criminal transgressors, such as, of Traffic laws, etc.

This may or may not improve matters. As I have said, the word itself is unhappy for it seems to indicate rather an enduring trait. A man committed a crime at the age of 25. Does he continue to be a criminal all his life?

Parmelee discusses these points at some length. For instance, he observes, certain acts are stigmatized as criminal under almost every social system. Murder is thus a crime in all civilized communities. A murderer is thus a criminal. So far there is hardly any difficulty. There is reason to suppose in the light of clinical and other researches that there are certain types of individuals who are very likely to become criminals in any social system. These are the intractable, rebellious, unadaptable persons who react against any form of social restraint. In this group it may be possible to find a universal type of intractables in every community. Yet the difficulty is not solved so easily. These intractables are those that have in many cases made history.

For example, human laws have never been perfect. First came the despots to frame and promulgate laws in their own fashions. When states adopted laws of a particular religion, nonconformists were apt to be stigmatized. Nearly every freethinker or progressive reformer has had to suffer on the score of standing laws coming to grapple with him. It has been the fashion of almost every law-giver whether in the name of God or of the people and of every law-making body to claim something of a finality for their laws. They perhaps did their very best but were certainly limited by the existing usage and custom and the extent of knowlege that was then available. In this sense therefore, the thoughtful and rebellious section that in each case violated laws and incited others to do so with a view to protesting against the inequity of the existing ones and the laying down of better ones, would stand out as criminals also.

This brings us back to the question if there are, among the crimes and offences recognized by existing laws, any which at all times and in all places had been recognized as punishable acts. This is, in other words, the theory of 'Natural Crime' of Garofalo. When we think of certain hideous crimes such as parricide, assassination, murder for the sake of robbery, murder from sheer brutality, the question, on superficial thinking, would seem to require an answer in the affirmative. If of all who have some philosophy or religion for guides, the question was asked if 'theft' had not been a loathsome crime in their system, the answer would perhaps unanimously be yes. Yet on authoritative research, it has been found that there are very few acts which have been at all times and places considered criminal. Even murder, rape and looting have at one time or other been looked upon as allowable, nay, commendable acts. Beccaria said, "Whosoever reads with a philosophic eye the history of nations and their laws will generally find that the ideas of virtue and vice, of a good or bad citizen, change with the revolution of ages."

Parmelee, in this connection, would distinguish between common crimes and political crimes. Many political assassinations by regicides, revolutionaries, terrorists, etc. may be called political crimes when committed for the purpose of changing or overthrowing the existing government in the alleged interest of the public. When they are committed in the interest of individuals they will be common crimes. In other words, the motive behind may be egoistic or altruistic. History records brutal murders of millions in the name of God, King, or the people! In these cases, the murders were the outcome of fanaticism in favour of some fancied ideal. If a man or woman takes it upon himself or herself to shoot down an officer simply because the officer happens to serve the existing government which does not satisfy his or her false or unattainable ideal, the fanaticism should hardly lift him or her above the common criminal.

Dr. Mercier also is inclined to differentiate acts on base selfish motives as against those on altruistic motives. Thus while Stephen, following Austin, defines crime as an act or omission that the law punishes, Dr. Mercier regards it as 'consisting of acts and omissions that are infractions of the law, not as it is, but as I conceive it ought to be : a criminal is he who has committed any such act or omission'. Trivial breaches of byelaws, according to him, may be called offences or defaults. He brings to the front the very question that is worrying us at the moment. I am afraid Dr. Mercier does not seem to ease the situation by any means. By considering infractions of law *as one conceives it ought to be,* he may be giving the greatest license to law-breakers. For do not most of the criminals, like belligerent powers, consider their own acts justified in some way or other ? The burglar who quietly bores a hole and relieves the rich of any superfluous wealth they may have no real use for, may be thinking that the Law that does not provide '*Dal Bhat*' (bare food) to all members is viciously inequitious !

These discussions leave us where we were, for attempts to make the word 'criminal' strictly exclusive have failed. They indicate that no persons are born criminal in the sense that they are criminal at birth, or predestined at the time of their birth to become criminal. Conversely there is no class that is entirely non-criminal. Those criminals that arouse our disgust differ only in the degree of their criminality.

"There are no saints, despite the canonizations of the church. In every one are to be found the emotions of anger and of jealousy which frequently lead to murder, the sexual passion which sometimes leads to sexual crimes, the germ of avarice which leads to various crimes against property, the love of pleasure and the lack of foresight which in their extreme forms lead to various kinds of criminal conduct."

In this connection, I should discuss at some length the views of Dr. Mercier on factors of criminality. His views are by no means entirely novel but they have been advanced with ample clarity and in a convincing manner. According to him, the commission of every offence is a function of two variables. It is due to temptation or opportunity, the environmental factor or stress acting upon the predisposition of the offender, the inherent or constitutional factor. It thus resembles every other form or sphere of conduct in being the product of two factors which enter into it in varying proportions. In every offence the more of the one factor is present, the less of the other is required to bring about the action. When neither of the factors is there, no commission results. A very powerful and alluring temptation will break down the virtue of even a very moral person who would not succumb to an ordinary temptation. A thoroughly immoral person will require but a very small temptation to commit a crime. For crime, as for madness, every man has his breaking strain and will give way under the stress if the stress is sufficiently powerful and of the right kind. So that in all crimes, as aforesaid, temptation acting on proclivity, proclivity subject to temptation or that milder form of circumstances we call opportunity, are to be recognized as the necessary condition and the necessary cause respectively. "We of the Church of England," Dr. Mercier says, "confess daily or weekly in the order for Morning and Evening Prayer that we have done those things that we ought not to have done, and that we have left undone those things that we ought to have done, and for most of us there is truth in the daily or at any rate in the weekly, confession". It is yielding to temptation that constitutes criminality.

The circumstances are presented in two poses :–they may present themselves as opportunity or as temptation. Opportunity is absolute—it consists in the existence of circumstances which make a crime possible. It is not necessarily relative to a person. An unfastened window in an empty house full of valuables or a cash-box not locked and left in the open presents an opportunity for crime. Temptation however is solely relative to the person tempted. It consists in circumstances that constitute an allurement to some particular person or persons to commit a crime while to others the allurement may be too feeble. To some the very opportunity is a temptation. Opportunity is opportunity whether it is known or not known but it does not become temptation until it is known and even when known, it may only remain still an opportunity and not become temptation, for temptation is strictly relative to the person tempted. To another person it may mean nothing. An unfastened window may induce one who is passing by to warn the owner against possible danger while to a night-prowler, it may present an invaluable opportunity for a crime.

So we come to the following corollaries which should hold good.

1. Given the opportunity, the stronger the disposition the stronger is the temptation.

2. Given the disposition, the more manifest and facile the opportunity, the stronger is the temptation.

The two facts, internal and external, are therefore complementary. Either factors may dominate but both must co-exist. Both should receive careful study.

In other words, the factors to be studied equally carefully would be :

1. The criminal himself, his constitutional make-up, physical and psychic, inherited and acquired ;

2. His environment and the shape of things that constitute his field of activity.

We shall proceed to study the former presently but before doing so, we may make a few observations on Dr. Mercier's views.

As I have said, the ideas are by no means entirely novel. The morality preached by the church of almost all religions, assumes shape on the ideas thus expressed. It is continuously preached that the world with all its opportunities is there to tempt us to evil deeds and strength of mind needs to be cultivated to keep ahead of corruptive influences. The evil passions are pointed out as eternally there and *Satan* (a mere personification of tempting vices) as perpetualy trying to lead us astray. In other words, the internal factor and the external in Dr. Mercier's conception, have both been recognized for a long time.

A question might be asked here. Does he contemplate that mankind is divided congenitally into those whose breaking points are low and others whose breaking points are high ? Is not the internal disposition itself shaped to a great extent by influences outside the person ? I cannot conceive of Dr. Mercier dividing mankind catergorically into sheep and goats, again.

The outcome is that before, criminal behaviour, like all other behaviour, is a continuously growing pattern of activity drawn by the interplay of many forces within and without the criminal person. The word '*interplay*' needs to be specially noticed.

"It seems probable", says Sutherland, "that in a situation where all the influences point consistently in one direction, all persons will act in the same manner. In actual life we have no situation of this nature, for the influences are conflicting. The more conflicting these influences are, the more completely does the behaviour of the individual become unpredictable, incalculable, and unexplainable, for it will be determined by a series of subtle and attenuated influences."

CHAPTER IV

THE PSYCHOLOGY OF THE CRIMINAL

Sec. 1. The psychology of the criminal a part of psychology in general—Desire and aversion—Instinct—Feeling—Emotion—Sentiment—Will—Such factors and criminality.

It is to the internal conditions that we now turn. The psychology of the criminal is but a part of human psychology in general. Human psychology is an engrossingly interesting study but the pity is that we know so little of it.

It is superfluous to emphasize the need of at least an elementary knowledge of psychology on the part of those that have to deal with the criminal either as investigating or as prosecuting officers and even as judges or prison officials.

Psychology is said to be the Cinderella of the sciences. While other sciences can point to a march of steady progress, lay claim to agreed bodies of knowledge, psychology has to record only a series of marches and counter-marches, to retail opinions of diverse schools and very often to exhibit conjectures as dogmas. The reasons for the comparative backwardness of the science are various. It is possible, in the first place, to doubt altogether the existence of the very mind itself. We never really meet the 'self' that thinks, hopes, fears and desires. If mental states are like beads strung on a thread, I am aware of the beads but never of the thread that holds them together. There is the unfortunate identity, in the second place, between the subject that investigates and the object that is investigated. When we consider further that the mind is like an iceberg in that only a small part of it appears above the surface of consciousness and that this part is held by psychologists to be entirely or mainly swayed by what goes on below the surface we recognize the speculative character of the science of mind itself.

The studies of Mesmer about hypnotism, of Janet of the structure of consciousness and of Morton Prince of the problem of multiple personality,—the conceptions of Freud, Adler and Jung of the unconscious, Kretschmer's formulas for tracing the effects of bodily constitution upon mental disposition and Pavlov's theory of conditioned reflexes—all these appear intriguing to the layman.

Despite everything, however, the science is fascinatingly interesting and every educated man should have an elementary knowledge of it.

Before I proceed to detail finds of modern psychology that are relevant to our present enquiry, I should condense for information of the reader a retrospective survey showing the background of the new but fascinating science of psychology the importance of which in a study of criminality has already been indicated.

Psychology originated in the thoughts of primitive men about the phenomena of sleep, dream, insanity and death. By an interpretation of nature in the light of the primitive's own experience, everything around came to be regarded as endowed with conscious life and able to affect human affairs agreeably or adversely. Such Animism later gave way to the problem of human conscious self. The epoch of Greek speculation is the next discernible landmark. The scepticism of the Sophists was based on the doubtful validity of sense-perceptions. All truth, they said, was relative to the observer. There was no objective truth. This school thus drew attention to the *personal element* in knowledge. Greek philosophy upto this point was predominantly objective, to the relative exclusion of man, his mind, its origin and nature. Socrates, Plato and Aristotle then came into the field. Socrates, to his immortal credit, countered the sceptical individualism of the Sophists with a doctrine of *rational, universal and socially acceptable knowledge.* He thus laid the foundation for future enquiries. Aristotle's study of movement led to the view that all perceptions are accompanied by pleasure or pain. These give rise to impulse and desire. Impulse, appetite and emotion lead to action. Besides these spontaneous motives, however, there is also deliberate will, which may be described as intelligent desire.

We shall see how this very framework has been worked on by modern psychologists although in precision of ideas we have travelled far afield. Psychology in early Christianity and in the Middle Ages did not make much of a progress although Augustine and Thomas Aquinas made some contributions in their own ways. With Descartes, Locke and Berkeley we enter the modern era and with Darwin and his theory of evolution, psychology makes excursions into all sorts of evolutionary connections. We shall presently speak of the more modern thinkers as we proceed with our topic.

The mind is a whole but it has certain primary departments though not strictly defined. These are Desire, Intellect, Feeling, Will and Memory. Some deprecate such a division but it certainly facilitates better understanding by laymen.

Desire and aversion go hand in hand. Desire for food is the obverse of aversion to hunger. Before conduct can come into existence, there must be a motive, a prompting and internal urging to act. Action, as defined by Dr. Mercier, is *movement or arrest or suppression of movement, for the attainment of a purpose.* Purpose is always the satisfaction of some desire or the avoiding of some aversion. Every man possesses every one of a small number of instinctive desires and from their promptings, singly or combined, in harmony or conflict, springs, in the last resort, all human conduct.

If a man steals food to save himself from starving, he does so in his instinctive desire for food. If instead of stealing, he works for money to enable him to buy food, he acts on the same desire. If he steals food to satisfy his child's hunger, his action is prompted by the parental instinct.

Now what is this instinct? Everybody has some rough idea of this basis of most of our desires and aversions. Instinct is roughly *the natural tendency of a living being to act in a particular manner.* The web-spinning of the spider, nest-building of the bird, comb-building of the bee are examples of instinctive action. Webs constructed, nests built, and combs made are done roughly and loosely by all individuals of the species. The products are mostly similar. We can be practically sure that an individual spider surviving to a certain age will spin a web. Thus we give the name "instinctive" to action which is determinate; which is executed more or less uniformly by every individual of the species; which is predictable. Instinct is congenital behaviour.

Man, like all of the higher animals, has inherited many of these instincts. The lowest animals and especially the protozoa give direct reactions to external stimuli which are called *tropisms.* As we ascend the scale and as the nervous system evolves, many *reflex* actions appear, and then appear combinations of these reflexes in complex forms, which are called *instincts.*

The antiquated psychology of the Middle Ages considered the mental life of man and that of the beast to be two entirely different phenomena; the one was attributed to 'reason' and the other to 'instinct'. In harmony with the traditional story of creation, it was assumed that each species had received a definite unconscious psychic force from the creator at its creation and that this instinct of each was just as unchangeable as its bodily structure. Lamarck and Darwin completely proved the untenableness of this theory. Darwin's theory of instinct has been ably explained and expanded by Romanes in his distinguished work on *Mental Evolution in the Animal World.* I feel tempted to summarize the interesting study but the limited space at my disposal wholly precludes my so doing. Suffice it to say roughly that instincts are common to all organisms, they are subject to modification under the well-known 'law of adaptation,' to transmission under that of 'heredity,' while 'selection' again singles out certain of these inherited modifications of the psychic activity for preservation and others for rejection thus leading to the divergence of psychic character.

There has been a wide and almost forbidding divergence of opinion as to the nature of instinct. The word is popularly used in a very loose sense and one comes across mention of humanitarian, prophetic, criminal, patriotic instincts, etc. Such conception is obviously mistaken.

Loeb and others have identified tropisms, reflexes and instincts with one another. This is the most extended conception and Herbert Spencer defines instinct as 'compound reflex action.' Undoubtedly they are all allied. Each of these three terms connotes an *inborn capacity for effective behaviour which expresses itself in immediate response to a particular stimulus without requiring practice or inference.* When we scan the behaviour of plants and living creatures, we find many activities or responses that seemed, to begin with, clever, really automatic. It has long been well-known that certain plants turn their flowers, leaves, etc., towards the sun while other plants turn away from it or light. Such reacting has been called *tropism,* positive or negative as the case may be. The moth and earthworm, among the lower organisms, exhibit similar reactions in flying towards a source of light and crawling away from the sunlight respectively. Similarly and *instinctively* the young spider on its first attempt constructs an intricate web true to type.

Parmelee, after a well-reasoned survey of opinions in this field, comes to advocate slight differentiations among the three terms. He prefers restricting the term *reflex* to the *actions of animals with a nervous system* as also the term *instinct* to the *behaviour* of such animals. As between a reflex and an instinctive action there is only the difference of *degree.* An instinct would simply be a compound or complex of reflexes. Parmelee has given a new definition to the term instinct thus :

> An instinct is an inherited combination of reflexes which have been integrated by the central nervous system so as to cause an external activity of the organism which usually characterizes a whole species and is usually adaptive.

H. G. Wells and his collaborators in the 'Science of Life' thus attempt to bring out the differences :

A tropism is a blind and unreasoning drive within an organism.

A reflex is another kind of response, equally blind and unreasoning.

The differences between the two are :

(*a*) A reflex usually concerns only a part of the body (as the automatic movement of the hand when the fingers touch the red end of a cigarette).

A tropism affects the position and movement of the body as a whole (as the flying of the moth towards the source of light).

(*b*) In a reflex an abrupt reaction is elicited by some sudden change in the environment.

In a tropism, there is a more steady, underlying bias in behaviour, brought about by a constant stimulus.

Between them, topism and reflexes, underlie most of the phenomena usually loosely called 'instinct.' Wells and his collaborators will restrict this term to 'those elements in behaviour which are inborn in the organism, or which develop in later life (as the beard and deep voice of a human male develop) as a simple result of the organism's own constitution.' Instinct is congenital behaviour. Contrasted with instinct we have all those elements which depend upon individual experience—upon memory and learning. These, for want of a better word, one might call intelligent behaviour.

I need hardly pursue this technical topic any further but a true grasp of this basis of human behaviour is necessary for the student of criminology.

As I have said, there is a wide divergence of opinion as to the number of human instincts. The lists have varied, so much so that Darwin contended that man had fewer instincts than any other animal whereas James thought man had the largest number of them.

McDougall enumerates the following with their corresponding emotions :—Flight (fear) ; food-seeking (appetite) ; repulsion (disgust) ; curiosity (wonder) ; pugnacity (anger) ; self-assertion (elation) ; submission (the feeling of inferiority) ; parental (tender emotion) ; reproduction (sexual excitement) ; gregariousness (the feeling of isolation).

These are to be regarded as the *main human instincts and emotions* and other writers extend or otherwise vary the list. Angell, for example, includes fear, anger, sexual love, jealousy, sympathy, etc., all of which are emotions which we shall study presently.

McDougall's list has also been criticized on some of the points but in view of the diversity of opinion, this one can be accepted for all practical purposes. Each of the tendencies he has mentioned and its corresponding emotion is evoked initially by certain stimuli quite apart from previous experience. Thus pugnacity and the emotion of anger may be evoked in very young children by restraining their limbs.

The term 'instinct' is often misused for habitual modes of behaviour which have been acquired and not inherited. The difference is this : With regard to habitual actions, the mechanism must be laboriously constructed by exertions of the individual whereas with regard to instinctive actions, the mechanism is inherited ready-formed as the structure of the ear and the eye is inherited ready-formed. A little thinking will make this distinction obvious. Instincts are *inherited;* habits *acquired.* The former pervade the *great generality of a species;* the latter only *individuals.*

Intellect plays an important part in the formation of habit and in directing conscious and unsconscious behaviour. Parmelee says:

> In an animal with a well-developed central nervous system which has aquired a large and varied store of memories, the behaviour which result from a certain stimulus may be vastly different from the purely inherited reaction which would respond to that stimulus if

these memories were not present to vary and complicate the behaviour. Such behaviour is *intelligent*, and the capacity for such variations in behaviour constitutes *intelligence*.

The intellectual make-up or constitution, while much is common, is yet peculiar to each individual. In grade, the individual may be brilliant, dull or feeble-minded or imbecile or idiotic. Brilliance may again show in inductive—or deductiveness, practical action or speculative thinking and the bent may be towards discovery or invention, etc.

Feeling is the most subjective part of the mental make-up. Consequently it is difficult to describe it. 'Feelings are certain kinds of sensations, or, at any rate, certain aspects of certain kinds of sensations'. We have ample evidence in our own personal experience of its existence, and of its potent influence upon behaviour. It has such influence because painful feelings tend to inhibit the acts which give rise to them, or to draw the subject experiencing them away from the stimuli which cause them; while pleasurable ones tend to re-enforce the acts which give rise to them.

There are various kinds of feelings ranging from simple, highly localized feelings to complex ones. Some of the most complex feelings or rather combinations of them, are called *emotions*. Some of the most important *emotions* are anger, fear, jealousy, wonder, etc., as in McDougall's list already given. There are some other emotions apart from the distinct emotions which may be called general affective states, such as, envy, sympathy, shyness, etc.

Instincts have corresponding emotions. To the instinct of flight is allied the emotion of fear, to the instinct of curiosity wonder, to the instinct of pugnacity anger and so on.

The fine distinction may not be obvious to the laymen ; as a matter of fact there is a good deal of confusion caused by thinking of emotions and instincts as coincident. It is therefore necessary to exclude from the reader such confusion by making the distinction clearer. Let us take an example,—fear is an emotion but the instinct is of flight. Instincts and emotions are alike in being inherited. But *instincts are inherited tendencies to action, while emotions are states of feeling.*

Instincts well up from the depths of our nature. They are, in origin, independent of circumstances and in their primitive and general forms, will be felt whatever be the circumstances ; while *feelings* of the second class (emotions) are elicited by circumstances and in absence of provocative antecedents would never be felt at all. Let us take desire for food and the emotion of anger. The angry man does not become angry unless there are provocative factors to act on him while the hungry man feels hunger through having an empty stomach merely sitting *in vacuo*. Anger needs to be stirred up. This capacity is inherent and innate to such an extent that even a man of gentle disposition may be worked up to a pitch of anger at which he may commit either suicide or murder. The occasion of feeling is its provocation and elicitation by action from without.

It is impossible to influence criminal conduct intelligently and effectively without understanding to what extent it is due to instinctive tendencies and to what extent to emotional states, because instincts and emotions must be treated in different ways owing to their diverse natures. Psychologists are studying these more intensively and it will be possible to view them apart in more defined outlines.

All the external expressions of emotional life which we find in man are also present in the higher animals. However varied they may be, they are all derived from the two elementary functions of the *psyche*, sensation and motion and from their combination in reflex action and presentation. The *passions* which play so important a part in the psychic life of man, are but *intensifications of emotion.* "Even at the lowest stage of organic life we find in all the protists those elementary feelings of like and dislike, revealing themselves in what are called their *tropisms* in the striving after light or darkness, heat or cold, and in their different relations to positive or negative electricity. On the other hand, we find at the highest stage of psychic life, in civilized man, those finer shades of emotion, of delight and disgust, of love and hatred, which are the mainsprings of civilization and the inexhaustible sources of poetry."

The emotion of fear, a most important one, has been our most ancient enemy. Primitive humanity were unprotected against more powerful animals and stood in awe in presence of lightning, thunder and other manifestations of nature. This emotion greatly decided the actions of men and women. Children in all ages and places inherit it. We may fear for ourselves, for others : something in this world, something in the next. As a matter of fact, the zone of phobia widens and shrinks for different men and the diverse things men are afraid of include poverty, darkness, microbes, insomnia, mice, dogs, lightning, solitude, marriage, accident and ghosts. It has also been a prolific source tapped by prophets and leaders to make people do things and keep them from doing others. Fear specially acts by preventing actions and is thus used by society for preventing criminal acts. It has its abuses too as in cases of vast millions of men and women who are kept in terror by dictators to make a particular regime enduring. We shall study this emotion further in other connections, as also a great many others when we come to discuss the various forms of crime.

Closely following upon emotion and passion which we have just studied, comes *sentiment*. *Sentiment* may be said to be a system of emotional tendencies clustering round an object or its idea. The growth of a sentiment arises as a result of the law of habit operating on one's emotional nature. Just as ideas may be associated so emotions may be associated together. The results are composite tendencies which are variously named *sentiments*, *interests* or *complexes*. Sentiment is thus *the sum of what one feels on some subject*. If a father scolds his child a number of times, the child acquires a habit to experience fear even at the sight of the father. If the father continues, the child may entertain a feeling of disgust and later anger or hatred for the father. Or, when one loves a friend, one will experience pity when the beloved is in trouble, anxiety when he is in danger, joy when he thrives well and anger when he is attacked or vilified. All these emotions are excited within the sentiment of love.

Will is the faculty by which a person decides or conceives himself as deciding upon and initiating action. *Memory* is the reproduction in the form of images of objects not actually present to the senses. It consists essentially in the *reproduction of presentations*. Ewald Herring in a thoughtful work, showed "memory to be a general property of organized matter," and indicated the great significance of this function, "to which we owe almost all that we are and have." Haeckel has attempted to show the evolutionary scale of memory and base ideas regarding memory on the principles of evolution.

We may now wind up our discussions by showing how these various faculties of mind influence human conduct and then criminal conduct.

Every act is prompted by some motive, however apparently undetectable. Motiveless acts are signs of madness. Motives may act directly or indirectly. The first are predominantly instinctive, in the second there is infusion of reason. Dr. Mercier illustrates this by an example. When a man falls in love, the yearning he feels for association with his beloved is a purely instinctive desire. He must get a holiday, procure an invitation, write letters, intrigue and finesse in a dozen different directions. In all these, he is employing reason. Each step is devised by it. If his affection cools down, the train of desires diminishes in intensity.

The most illustrative example of desire is hunger. The stimulus is a bodily condition. When in this condition, an animal becomes restless and if he sees or smells food, he moves towards it, and if possible, he eats it. If the quantity is sufficient, he becomes quiescent. This is the cycle of desire and its fulfilment as going on in the animal kingdom, or at any rate, in most of it. And what applies to hunger applies equally to other forms of desire. While in the lower animals, the whole process is more or less reflex, in the higher, more especially in men, it is extremely subject to 'conditioning.' So while the young of animals have more of the useful reflexes aiding their survival, the human infants have far fewer and are consequently far more helpless. The adaptability of human adults is, however, far greater than that of animal adults in whose case the useful habits are fatally fixed from birth.

The 'conditioning' of primitive desires in human beings distinguishes our life from that of animals. Most animals only seek food when they are hungry and thus often die of starvation not finding food. Man acquired pleasure in hunting as an art and thus set out hunting before he was actually hungry. A further stage was reached with the domestic animals; a yet further one with agriculture. Now-a-days, when a man works and earns his living, his activity is still connected with hunger and other primitive desires that can be gratified by means of money.

Now of all these secondary, tertiary and successive desires, more and more remote from the primitive desire, and more and more directly concerned with the act that is being performed or about to be performed, one alone has attracted the attention of the jurists who assign to it a special importance and distinguish it by a certain name. This is the very last of the series, that which prompts to the very act that is done and that which must have been in the mind of the actor at the time he did the act—this is the more obvious than others. We lose track of the chain, the further backward we go. The last is the intention. The intention of the act is, therefore, the desire to do the act and to bring about the consequences that, in the natural course of things as generally known, must result from the act. The previous desires are termed 'motives.' Intention is necessary to crime as we have already explained and shall further discuss when we take up 'crime.'

We have already indicated, in connection with the theory of Dr. Mercier with regard to the nature of the criminal, the internal and external processes in criminality. It will be helpful here to sum up the mental process in criminality in the light of the preceding discussions. As Sir Hari Singh Gour nicely puts the whole matter, the process of normal mental activity culminating in acts and consequences is this :—The initial stage is the rise of some desire in the mind. This desire is accompanied by the idealization of some movement as bringing about its consummation. The recognition of the causal relation of the action to the result involves a germ of belief in the attainability of the object of desire, or in the efficacy of the action. The action thus idealized has now to be carried into effect. Its preparatory stage is reached by volition, which is the exercise of the will leading up to fruition of the desire. Thus then in a voluntary action the desire of the end is the cause of the desire of the means. The former is the motive, the latter is the intention. It is the "solicitation of the motive" or the mere prompting of the mind as yet not followed by action. Next we have the direction of the active impulse involved in the state of desire into the definite channel of action suggested. This stage of the process of volition is known as the *act.* The impression it produces on the external world is spoken of as its consequence.

The true significance of these terms is not always realized. The student of criminology and of law has to take careful note of them.

These, then, are the main factors in the psychology of the criminal, and it will be seen from our examination that there is no special psychology peculiar to him. The mind of the criminal is constituted of the very same elements that act in the very same way, as those that constitute the minds of other people. The only difference, if there is any, is that whereas in no two persons all these factors are severally of equal strength and combined in equal proportions, in criminals some of the factors are normally over—or ill-developed and the constitution as a whole contains them in proportions differing rather more widely from the average or mean than do the mental constitutions of other men. *The difference is of degree and not of kind.*

Sec. 2. Heredity and environment in relation to criminality.

We shall conclude this topic with a brief note on "Heredity" and "Environment", those two magic words that have figured most prominently in discussions of nearly every problem concerning the animal species and the human race. Laymen have only very rough ideas as to what these two mean and are fond of loosely quoting the one or the other when it suits them to emphasize congenital traits or the external surroundings. It was usual for the Brahmins of India to claim descent from a specially created class and the resultant monopoly of all the good qualities of which humanity could boast. It was usual for the Harijans to retort that whatever the Brahmins could boast was due to favourable circumstances that they, by luck or misappropriation, had seized. The old controversy has been going on unendingly and science has now been able to throw some light on the matter. As a matter of fact, both factors, 'heredity and environment' *are* powerful and *do* influence human race and conduct considerably. We have seen how theorists have emphasized this factor or that in the making of a criminal.

They have ranged all the way from the criminal being born as such (Lombroso) to his being a perfectly normal man only falling off from grace because of certain fortuitious circumstances. We also know how commonly people regard with prejudice the progeny of the criminal. When we speak of the criminal classes operating in Bengal like the Bhamptas or those under detention like the Karwal Nuts, we are likely to think that these professional wrecks come into this world as such and will leave progenies so foredoomed. If this were true, it would surely be a social calamity. We shall presently see what is there in this supposition of ours. It is needless to stress that the student of criminology has to realize the imports of these two factors as accurately as is, in the present circumstances, possible.

Until very recent times, it was believed that every species of plant and animal was created separately, man's creation crowning the end. Hence species were considered immutable. In 1859 Charles Darwin showed the error of this dogma. He showed that the various species of plants and animals now living, including man, were formed gradually by the perpetuation and accentuation of variations in the individuals of a species. This is known as the *Theory of Evolution* and the natural forces which influence these changes have been classified as the five Laws of *Evolution,* stated briefly thus :—

1. Heredity—Like produces like. Dogs do not produce cats but dogs. In other words, the child resembles the parents physically as we see. Does it do so also psychically ? We shall presently see.

2. Variation—No animals, even of one kind, are exactly alike. The commonplace but really astounding fact we everywhere see is that no man resembles exactly another, however closely related the two may be. There are always some differences in the physical form and appearance of all men. Do they differ psychically also ? They do as we ordinarily see. We shall presently consider this also.

3. More of all kinds of plants and animals come into being than can possibly live. Nature is extremely prodigal. Hence—

4. The struggle for existence—This goes on everywhere. Every plant or animal must fight for food and other necessaries of life. Therefore—

5. The fittest survive.—Individuals strong enough to win food, or best adapted to environment and the conditions of living, are the

most likely to continue to live and survive racially.

Heredity is but a flesh-and-blood (or genetic) relation between successive generations. Like necessarily tends to beget like. Every educated man knows of the remarkable process of impregnation, precise information of which has been available only towards the end of the last century. The Miracle of procreation has been unravelled. But it is by no means less striking when we begin only to think of the process of development "wherein a detached portion of the adult or a liberated germ-cell proceeds to reproduce an entire organism. Out of the apparent simplicity of the egg-cell there develops the obvious complexity of a young creature ; from a clear drop on the top of the yolk of a hen's egg there develops a chick. From a fragment of a begonia leaf there develops an entire plant-flower and all. The latent becomes patent, the apparently homogenous becomes the obviously heterogenous, the invisible becomes visible !" I have detailed the processes in another work and shall condense informations of value thus :—

1. Each human individual, like every other higher animal, is a single simple cell at the start of his existence.

2. This "stem-cell" is formed in the same manner—by the blending or copulation of two separate cells of diverse origin, the female ovum and the male spermatozoon.

3. Each of these sexual cells has its own "cell-soul"—i.e. each is distinguished by a peculiar form of sensation and movement.

4. At the moment of conception or impregnation, not only the protoplasm and the nuclei of the two cells coalesce but also their "cell-souls." The potential energies latent in both unite for the formation of a new potential energy, the "germ-cell" of the newly constructed stem-cell.

5. Thus each personality owes his bodily and spiritual qualities to both the parents. By heredity, the nucleus of the ovum and the spermatozoon each contributes in some degree to the physical and mental make-up of the embryo.

Although the evolution theory holds good in the main and has, in a sense, revolutionized human thought and speculation, it may still be said to be itself evolving. Post-Darwinian researches have confirmed it generally and in details have marked even further advances.

The tendency of the like to beget the like depends on the *continuity of the germ-cells*, a fact brought into prominence by Weismann (August, 1834-1914). It is characteristic of organisms that each is affiliated to the past and normally parental to the future. Living creatures are thus to be thought of as links in a hereditary chain. 'Ever present is the child of the past and the parent of the future.'

This is, of course, an old idea but researches of Galton, Mendel, and others have made this more incisive. The parent organism, especially the mother, is obviously the producer of the child but it would, according to Galton, be truer to say that the parent is the trustee of the germ-cells, which will eventually develop into off-spring. As Weismann put it :—"In each development, a portion of the specific germ-plasm contained in the parent egg-cell is not used up in the construction of the body of the off-spring, but is reserved unchanged for the formation of the germ-cells of the following generation". This is a highly interesting but technical topic which I need not pursue further here.

Weismann in his *Essays upon Heredity and Kindred Biological Problems* raised a great controversy by denying the inheritance of acquired characters. The question relating to this is whether individual modifications, badly called "acquired characters," can be handed on as such, or to a degree, to succeeding generations. Such modifications are individually acquired bodily changes which so transcend the limits of organic elasticity that they persist after the inducing causes have ceased to operate.

Lombroso again and again speaks as if habits or the effects of habits are transmitted by hereditary means. This might be likened to Herbert Spencer's theory that he had small hands because his father and grandfather, being school-masters, were habituated to such manipulations as sharpening pencils! The consensus of opinion among biologists to-day seems to be that no acquired traits can be transmitted by hereditary means. The classic example is that the Jewish males have been circumcised for nearly 3000 years and yet every male child is still born with a complete foreskin. Attempts to produce tailless rats have also failed.

The science of heredity has made great strides since the days of Weismann. Parmelee has summarized the modern theory in his book, *The science of human behavior.* The new science of genetics has revealed to us and is progressively illuminating the internal mechanism of the variations.

We find a certain amusement in a line of research that has been followed in America. To test the respective influence of the two factors of "heredity" and "environment" cases of identical twins are examined. Such twins develop from a single ovum, while ordinary twins develop generally from separate ova and as such look as different from one another as other individuals. Identical twins, however, are found to have an extraordinary and minute resemblance to each other in their behaviour in early years, before differences of environment and education are felt, and retain this resemblance to a very great extent if they remain in the same environment.

The latest (January, 1938) we hear about investigation in the direction of probing heredity secrets is by the Bureau of Human Heredity which is organizing, from London, a world-wide search for clues which may solve the age-old riddle of hereditary insanity.

The Bureau, set up on the suggestion of an International Group in order to give free information on hereditary problems to both medical and private inquirers, is collecting and codifying data in almost every civilized country.

We shall await with interest the authoritative conclusions of this Bureau.

The difficulty is, however, that the other factor "environment" rushes in quite early and it is practically impossible to keep up artificially the same environment for any two. The unborn young mammal is bound to the wall of its mother's womb in a very intimate partnership; so much so that the young creature may be influenced while it is still in organic continuity with its parent, and though this influence, both plus and minus, may seem superficially part of its inheritance, it must really be called environment. Environment itself is a very wide term as we shall gradually see.

We may for a moment draw attention of the reader to an amazing chemical discovery, that of endocrinal or ductless glands and their hormones (secretions) which have thrown a light even upon human behaviour and character. This system of glands, which includes the thyroid, pituitary, adrenal, ovary and testis, consists of organs which exude specific products of a chemical nature, hormones, which pass directly into the blood throughout the body. The investigation of physiological changes connected with emotions has proceeded apace. Since the time of Lotze, one of the first to examine changes in bodily posture, facial expression, alterations in breathing and pulse, under stresses of emotion, many investigations have been undertaken in this direction. Brown-Sequard, Cannon and Crile worked on the secretions of the ductless glands and specially interesting is Cannon's investigation of functions of the adrenal glands. He showed how fear and rage excited in the animal provoked the secretion of adrenalin, with consequent increase in blood pressure, etc. We now realize in consequence of these discoveries that the apparently lazy person who will not respond to either appeals or threats, may simply be short of the chemical which his thyroid gland supplies. We realize that the emotionally unstable person may be a victim of sluggish parathyroid gland and the bad-tempered one may only differ from us in the activity of his adrenal glands. An expert has lately ascribed the brilliance of Napoleon and the genius of Julius Caesar to the state of one section of the pituitary gland in the former and a healthy thyroid in the latter. Investigations are yet being made but the possibility of such discoveries in the treatment of the mentally unbalanced criminal would undoubtedly be great. Two of the most important of these hormones have already been produced in the laboratory and a future generation may find the preacher and moral exhorter replaced by a chemical stuff which will remedy defects of mind or character by injections.

While 'heredity' has undoubtedly to be recognized as a potent factor, as giving the individual his senses ready-made, his instincts and emotions duly appended, it should never be so loosely interpreted as giving a so-called caste or race any inherent superiority over others *per se*. Every individual, as we have seen, starts with a separate existence and parental characters are contributed to him. The parents, however, have as yet found no means by which they can consciously contribute anything or even prevent anything. The brothers and sisters of Napoleon appear to have varied in mental faculties and tendencies from one extreme to the other.

Let us take Napoleon and his brother Joseph. Of the former we know that even as a boy he was solitary, suspicious, questing and rebellious, brooding rancorously over vast designs while of his own brother he wrote, "He lacks courage to brave the perils of the battle field......quick-witted and therefore inclined to pay frivolous compliments", etc. He went on reflecting qualities in himself which his brother lacked. Later, when in power, he had occasion to find fault with his brothers and sisters and regret their incapabilities. It would be really difficult to detect Napoleonic qualities in Louis, Jerome or even Lucien Bonaparte. Similarly, if we scan illustrious families, we are only pained to see brilliance and dullness, efficiency and incapacity, intelligence and imbecility in open contrast. Peter the Great had a son, Alexis, whose mental constitution, temperament and moral character were the very antithesis of his father. Wolfgang Goethe, probably the wisest among the wise of the nineteenth century had a son August who inherited none of his faculties. Pushkin's son was by no means brilliant. Tolstoy had several sons who lacked the literary genius or the philosophical mentality which he possessed. How many sons of illustrious kings have ascended the throne only to disgrace it ! It is true Nature distributes her bounties on individuals irrespective of race, clime or country and we have not as yet discovered her system. It is also true that a great many of these born geniuses wither away in unfavourable surroundings. Society should save such wreckage by any means in its power and for the generality of mankind it can tap the other factor which is also almost as cogent, viz., environment. This factor we shall study as we proceed.

As for the part Engenics may take in restricting criminal population, etc., we shall study it in a subsequent chapter.

CHAPTER V

FACTORS IN CRIMINALITY IN THE ENVIRONMENT

Sec. 1. Environment, natural and artificial—Physical environment—Climate, season and the weather—Nature of soil, etc., and criminality.

I have already indicated that the proper method of our study should be one of:

1. The criminal himself, his constitutional make-up, physical, psychic, inherited or acquired, at a given time.

2. His environment both natural and artificial. I have indicated that the mental make-up of the criminal contained all the ingredients of that of the generality of mankind. Let us now take up his environment. In doing this I shall make a rapid survey as a great part of these discussions will overlap those already made so far. In the theories studied, we have seen how the various thinkers have emphasized one or more particular factors. I have now only to sum up by saying that criminality is due to no single factor. There is undoubtedly some truth in practically every theorist's contention.

Historians and sociologists have remarked the influence of physical nature upon the development of society. The climate and topography of a country affect a people directly and account, to some extent, for the difference in characteristics and temperaments. Indirectly, again, they influence economic conditions and these have a direct bearing upon crime in the making of the criminal.

Many statistics have been gathered to show correlations, in some cases only to expose the force of the statement that *statistics can be made to prove and disprove everything.*

Lombroso believed that he had discovered that the minimum crime occurred in the level parts of France, a slightly greater portion in the parts that were hilly and the maximum amount in the mountainous districts. On the other hand he had found that rape was more common in the level country and also crime against property. He, however, hastened to explain these by saying that the mountains offered more opportunity for ambuscades and bred more active people. This is true. Coming nearer home, we find the Afridis, and other Pathan tribes of Indo-Afghan Frontier, continually giving trouble. The Adam Khel of the Kohat

Pass and the Zakka Khel of the Khyber Pass, have been object of British punitive expeditions. These people are elusive on account of the ambuscades possible and have been notorious for bloodfeuds. In the levels, Lombroso explained, rape and crime against property. were more common because of greater aggregations of people. So we see here an intermediate condition. It would be futile to compare the vast tracts of Sahara with more populated parts on this line because, for comparisons to be useful, *the likeness of conditions is essential.*

With regard to the influence of climate, it is usually argued that peoples of hot climates are less active than the peoples of temperate climates. Excessive heat stimulates the emotions and tends to increase irritability, thus leading to acts of violence. This fact seems to explain that crimes against the person are almost always more numerous in hot climates than they are in cold and more numerous in warm seasons than in cold seasons. Lombroso cites facts to show that southern Italy has a higher criminal rate than northern Italy. Parmelee, has quoted the following statistics to indicate proportions between crimes against the person and crimes against property in the different parts of France :—

	Agst person	Agst property
Northern France	2.7	4.9
Central France	2.8	2.34
Southern France	4.96	2.32

These statistics were taken long ago (1826-30) and, as I have said, these alone indicate very little. There may be any number of other factors, economic and social, intervening. There is certainly some influence exerted by the factor under consideration but it must be extremely difficult to assess the extent to any precise degree.

The seasonal fluctuation of criminality has also been studied by criminologists. Of sex crimes, Parmelee quotes comparative figures (1827-69) in France, the table showing that these crimes increased greatly during the warmer months, reaching their maximum in June. This is probably due in part to a periodicity in the sexual life of man which appears to reach its climax in the spring or early summer. It is due in part to the out-of-door life of the warmer months, which renders a freer intercourse possible.

I shall enumerate difficulties in basing conclusions on 'criminal statistics' when I take up this topic for discussion. There is always some amount of uncertainty in the figures themselves and when we say that infanticides hold first place in January to April, homicides and assaults reach their maximum in July, rapes are committed most frequently in May to August and crimes against property are most numerous in December, we may be overlooking many other factors. For example, if we scan figures of crime against property in jute-growing Bengal, we may be struck by the preponderance of crimes against property in about June and December, the two extremes of heat and cold ! But the factors more cogent than any others, would probably be the jute which is ready in the former and the dry land and long nights in the latter ! The two extremes here may render figures similar instead of making them extremely dissimilar as might be expected.

With such reservations, however, we may concede there is some, however slight, influence that is exerted by climate, season, weather and geological conditions directly upon the organism and thus they determine to some extent whether the conduct shall be socially good or bad. To revert to sexual periodicity, we clearly see that age of girls reaching puberty varies from 9 in hot climates to 17 or so in extreme cold. While sexologists differ as to the exact reasons of such wide variation in the human race, they roughly recognize the influence of climate as a cogent factor. But the influence of the physical environment is decidedly for the most part indirect These factors affect the economic conditions which determine whether the standard of living shall be low or high, whether there shall be *wealth or poverty*, whether the population will be crowded at places or distributed fairly and so on. In these various ways the external factors have an effect in the amount of criminality, kind of criminiality, and to a certain degree the social reactions to crime. The recognition of this will enable society to modify treatment of the criminal also to a certain extent.

Sec 2. The economic environment—Its importance —The struggle for existence—Growth of castes in India—Economic changes and crime —Seasonal fluctuations—Crimes against property—The economic status of the criminal—Economic parasitism of the criminal—Poverty and crime—Wealth and crime and vice—The standard of living and crime—Industrialism and crime—Capitalism and Socialism—The eternal problem of an equitable distribution of wealth—Conclusion.

This is one of the most important sections and we shall devote comparatively more space in studying this factor of criminality. The importance of economic conditions as influencing criminality ensues from the fact that almost all the needs of a man that admit of satisfaction through a material medium are said to be economic. The primary instinct of hunger calls for necessities for its satisfaction, procurable by wealth. That of sex also does so to some extent in the society of to-day. Even crimes against the person are indirectly connected with economic causes, such as, murder for gain, riots for land or other possessions, etc., etc. Jealousy has its origin in social differences springing from the contrast of riches and poverty. If want raises a desire for necessaries, cupidity engenders a love for comforts and luxuries. Political grievances too have often economic origins. Thus it is the struggle for existence in which mankind is engaged like every other animal species. Cultural evolution has but given the human struggle for existence an unusually specialized and complex form.

These considerations have led a section of writers to think that crime is due entirely to economic factors. Others have denied this and thought crime has very little to do with these. It is undoubtedly difficult to disentangle different categories of forces and appraise accurately their relative influence in the causation of crime. Yet nobody should have any doubt that the economic factor is one of the most powerful.

Dr. Battaglia discusses aetiology of crime in the spirit of an economist. His treatment of its causes is bio-social in method. The starting point is the existence of human wants and criminality represents the effort to satisfy them when they clash with social interests.

A historical retrospect of humanity from the economic point of view will thus start with the existence of wants and their satisfaction. The struggle for existence was primarily carried on in communal groups, the family, the clan and then the tribe, etc. Members of any of these originally produced what they required for their own use and the nature of products was determined mostly by physical environments. Thus men in Siberia could not be successful agriculturists while men in the Gangetic plains easily turned so. Expansion of communities and production necessitated allotment of work and manufacture of tools. Greater production brought about by the aid of tools necessitated exchange of surplus commodities. Exchange took the form of barter. The standard of exchange value was better laid when man hit upon metallic money. The law of demand and supply led to production of favourable conditions which gave rise to commerce.

In India division of labour unfortunately took a bad turn in what is known as the growth of castes. The system here acquired an unparalleled rigidity on account of the economic origin having been clouded by belief in religious sanctity. The system bound the whole course of a man's life—how he shall eat, drink, dress, marry and give in marriage and last but not the least how he shall earn his living, with the mere accident of his birth. As determining social position, it perpetuates inequality which is often a background of criminal activity.

The system has further brought about a social stagnation. By stigmatizing a vaster poulation as inferiors, it has retarded healthy growth in humanity. The prevention of crime is bound up intimately with the healthy growth of the society at large and not with sectional advancement only. Outside influences have broken down barriers to a certain extent but there is still work for many *Mahatmas* in this direction. It is a shame that antiquated ideas should continue hold over us to a degree that makes even the efforts of the consecrated life of the Mahatma seem so little effective. If there is any dictate that should be welcomed by the entire social system at this very moment it would be one for a social emancipation of this nature despite what the Shastras wrote or prescribed in the dim past. When I say this I have nothing but the general welfare of humanity at heart nor do I wish, in any way, to draw attention to comparative merits or demerits of particular religions.

Criminologists have correlated the rise of crimes against property with the fall in temperature. Charts and calenders have been inserted. I have a definite dislike for a proof of this nature and I shall discuss reasons when I take up the topic of criminal statistics. There are more crimes reported when, for example, jute is ready for changing hands. But does not this mean more opportunity for the same also ? Cupidity may be stirred by an increase of opportunity for gain. Again in the reverse circumstances, viz. those of scarcity or famine, there may be a similar rise, in this case, however, want rather than cupidity driving criminals on.

Charts have, again, been quoted to indicate direct correlation in Europe between the prices of bread and the incidence of crime against property. The tendency indicated would be that of crimes to rise and fall as the price of cereals rises and falls. The correlation is not always exact but there is frequently a noticeable lag partly because it usually requires a little time for economic changes to influence criminality. Here, in Bengal, we are apt to explain a rise and fall in reported crime by reference to a rise and fall of price of paddy, to the failure of paddy as well as to a bumper crop, to the rise and fall in the price of jute, to famine or plenty ! We are partially right in every case. Thus the rise in price of rice may affect the wage-earners who find it difficult to feed mouths whereas a fall may mean that agriculturists have to go without other necessaries of life. A rise in the price of jute means more wealth in the hands of the people of Bengal and this in its train will result in more heads being broken to get the wealth, influx of a poorer population from elsewhere to share the circulation of wealth by honest labour and dishonest methods and opportunities for the local criminals to see what they can get.

Criminal statistics here are very unreliable in the matter of indicating the actual incidence of crime in the country-side and that for many reasons peculiar to India. I have studied figures of crime reported in Bengal from 1912 when Bengal assumed its present shape, i.e., for a quarter of a century. Dacoity figures have oscillated and jumped and skipped. From 201 in the year 1912, they rose to 1919 in 1931 ! Whatever the causes for and whatever the action taken against this form of crime may be, the figures reflect a true state of affairs as a dacoity is very seldom suppressed.

Burglaries and thefts, on the other hand, have also varied but not by hundreds per cent. as in dacoity cases and what is remarkable is that while dacoities in the 5 years from 1915 to 1919 ranged between 437 and 686, they did so between 1242 and 1919 in the 5 years from 1931 to 1935 ! As a contrast, in the same period (1915—19) burglaries ranged between 39,812 and 43,508 and thefts between 21,522 and 27,068 as against between 26,149 and 28,464 and 12,436 and 13,950 respectively in the other period (1931—35). The first period covered the Great War days and the second the Civil Disobedience disturbance, economic depression, increased population, etc., etc. To my mind, no definite conclusion can be drawn as to the potency of the various factors on these figures and enormous doubt will attach to claim of these figures representing the actual state of affairs under present conditions of reporting of crime.

It is usually assumed that crimes against property are due to economic motives and are therefore economic crimes. Roughly speaking, this is true. There are a good many crimes, as I have already said at the opening of this section, which are due in part to economic forces, and also to other forces. Riots, for example, are classed as crimes against the person but a great many of these are overland, an economic factor.

Parmelee has shown by quoting facts and figures that the so-called economic crimes constitute the bulk of crimes in any country. We might quote from him the following.

		Economic crimes.	Sexual crimes.	Crimes of vengeance.	Political crimes.
Germany,	1896-1900...	41.89	1.32	56.67	0.12
England,	1881-1900...	36.78	0.63	62.59	0.00
France,	1881-1900...	60.09	1.59	38.32	0.00
Italy,	1891-1895...	46.75	1.57	51.68	0.00
Netherlands,	1897-1901...	42.12	0.84	57.04	0.00

Under crimes of vengeance are included such crimes as insults, malicious mischief, arson, assaults, homicide, etc.

We must remember that economic factors play at least a small part in the causation of many of the other crimes. For example, even sexual crimes which are believed to be crimes of passion are due in part to economic factors such as the economic difficulties in the way of marrying in early youth, the economic dependence of woman, intemperance, etc., etc.

The great preponderance of crimes against property in India is easily detected from crime figures of any place or period. The reader is referred to the Appendix for some statistics.

This brings us to the question of the economic status of the criminal. The status may be gauged roughly by ascertaining the economic classes with respect to distribution of wealth to which criminals belong, and by ascertaining the occupations to which they belong.

It appears to the most superficial observer that the majority of the criminals belong to the poorer classes, but is it not a fact too that the great majority of the population belong to these classes ? In India where the prevailing conditions are poor, it is undoubtedly true that the great majority of criminals will come from the poor classes. We shall touch upon this topic further when we study the relation of crime to poverty.

A number of computations have been made by writers to show the classes from which different proportions of criminals come. As I have indicated, I have a great dislike for such tables and shall not confuse issues by even quoting them here. It would suffice if we took even a commonsense view in this matter.

Computations made are often arbitrary and when not so, extremely undefined. Dr. Colajanni attached great importance to economic factors. According to him, in modern society, the thief calculates chances of honest and dishonest professions and finds the latter more profitable. If criminal occupations are risky, the thief receives encouragement from the fact that offenders many times the number of those in prison are outside it. We shall presently notice this view-point along with others.

Dr. Battaglia shows how appetite incites to theft by bringing on delirium. Chronic hunger and malnutrition may cause predisposition to it. He attributes the cause of unhappiness of the rich and the poor to the fact that while the latter vegetate in the blackest misery, the former are immersed in idle luxury.

Turati, a follower of Marx, maintained that economic advance on a socialistic basis is likely to end criminality or reduce it, since with better order, culture, material welfare, even the small percentage of pathological delinquency will disappear. 'A man does not become criminal because he is cold, but he who is cold becomes criminal if society does not provide him for the needs born of the cold'.

Ferri's view seems to be that only crime against property has relation to economic conditions, that sexual offences would remain unaffected, if not encouraged, by prosperity, and that education can little influence organic defects.

Bonger, however, expresses the opinion that the principal causes of crime against the *person* are "first, the present structure of society, which brings innumerable conflicts ; second, the lack of civilization and education among the poorer classes ; and third, alcoholism which is in turn a consequence of the social environment."

Salillas, a Spanish scholar, enunciated his theory of *Parasitism* i.e., absolute dependence on society for maintenance without rendering any real service in return, on the part of the criminal. The criminal, thus, is economically a parasite who, because of his nutritive poverty and social inadaptability, wants to usurp the fruits of others' labours in order to satisfy his own needs and appetites. He distinguishes criminals from beggars and prostitutes who are also looked upon as social parasites. Criminals, according to him, are enemies of society, beggars its guests and prostitutes however, render a social service of some value. He has only added one more *ism* by bringing home a common-place fact with more emphasis than is due to it.

In reviewing the various theories and opinions, I have only to address the reader to a consideration of the observations I made in summing up the opposing and conflicting theories regarding the criminal himself. There is something to be said for each but not one represents the complete view.

We know it is as difficult to ask a question properly as to answer one. Unless we narrow down range of our inquiry, our replies will be vague.

The correlation of crime and poverty is a very wide topic. I shall only consider a few aspects of it and leave the reader to work out others on the same lines.

What is poverty ? When we speak of the appalling poverty of the people of India we generally have before us those who hardly have the bare necessaries of life. In other countries, there will be fewer of such people but comparatively poor people there will always remain. What is crime ? We have yet to see, but it includes much of human behaviour.

Reverting to the instincts, we find the instinct of hunger will first want to be satisfied and in this, of course, the poorer classes will look to crime more than the rest. I must say that in the present conditions of unsettled economic structure of society, the poor and the unemployed are compelled more often to resort to crime for self-preservation. Not all are 'parasites'; a great many are perfectly willing to do anything that may come their way and are yet unable to find work. The landless cultivator, even one who possesses an insufficient plot has all the same to feed himself and other mouths and when wages are not forthcoming, may easily, perhaps of necessity, drift to crime.

Apart from want, however, that other impulse, greed, is common to all classes. No Rockefeller or Ford will cease his quest for more money. While real wants may be satisfied, fancied wants cannot.

The poor people may be impelled by jealousy seeing what the others possess and the comforts they can secure for themselves. But this factor will pervade all classes, since in the present state of human tendency a man is apt to compare himself with a more fortunate one and thus feel pangs of envy. Even pretty well-to-do people will do this in their turn. It is rather a characteristic of the poor in India that they attribute the difference to something extra-mundane and in doing so compare even favourably with the middle class. I do not wish to enter here into a discussion as to the merit of such a contentment but there it is. In this respect at least, it is certainly no wonder that there is so much crime among the poorer classes ; the wonder is that there is not more of it.

I would leave the reader to reflect on various other aspects of poverty and its attendant conditions. Poverty and all that it implies, is a blot on civilization. The faulty organization of society, which is passing for civilization will soon have to explain its reasons for even having endured so long.

Prophets have pacified the poor, encouraged them to endure, with hopes of a better future. They themselves believed in a better future and thus brought all their zeal and imagination to lend colour to it. Scepticism, however, is gradually creeping in. Science has been proclaiming the unity of organic life and disclaiming old ideas of preferential creation and a separate destiny.

This is giving rise to modern prophets who are ever adding fresh 'isms' in their endeavour to solve the age-long problem, that of equitable distribution of earthly goods leaving considerations of heavenly ones aside. One such group attempts a solution by socialism.

The most outstanding name associated with this movement is that of Karl Marx (1818-1883), the founder of international socialism. He was a man of extraordinary knowledge which he handled with masterly skill. Incomparably more than any other man, he has influenced the labour movement and his theories, have, in various ways, penetrated the different strata of society, but most of all, the working classes. With him is associated the Materialist Conception of History. He took the evolutionary conception and turned it upside down. For him the determining factor was the material equipment of society, ever dictating new methods of production and new social and economic arrangements designed to further their development. The days of the landlords and the industrial employers are gone but, according to him, with the victory of the proletariat there will remain no subject class to be exploited and with the coming of a classless society exploitation will cease. The development of capitalism, he says, depends on the appropriation and accumulation of surplus value. The poor sell their labour for a wage which represents the average subsistence required to continue the supply of labour. Their labour, however, produces a value greater than their wage—Marx's "surplus value"—and his mission was to bring this home to the people most interested, the working class, and help on the inevitable historical process in which, as far as possible, a classless society will more equitably distribute the wealth produced.

The difference between ideas of socialists and sociologists seems to lie in their slogans, "each shall work according to his faculties and strength and receive according to his needs" and "to every man according to his capacities and to each capacity according to its work". The former really attacks the institution of private property which is the foundation of the modern social fabric.

It seems to be very difficult to bring about a lasting state contemplated by the socialists. We have a living example in Russia where the greatest experiment with a large section of humanity is being carried on. After the turmoil of the great war in which the limit of Russian endurance was reached, the fanatical Marxist communists set about changing the social and economic order with the thoroughness of perfect faith and absolute inexperience. They believed they would carry the whole world with them. But their hasty and ill-planned attempts rushed an era of almost complete collapse by 1920. In these circumstances, it was resolved to slow down the process of reconstruction. A New Economic Policy was adopted and again to accelerate the process, a powerful effort was made in 1928. A Five-Year Plan was evolved and a considerable measure of success claimed.

Much of what Russia is doing and not doing remains a speculation, for information is zealously guarded and withheld from foreigners. Whether it has worked an economic salvation for the poorer classes, whether greed has been successfully eliminated, whether crime has gone down considerably could only be critically examined in the event of all material for and against the regime being freely available. From what leaks out from time to time, one has very little to doubt that a fanaticism prevails entailing a cruel intolerance. Whatever bliss it may have brought to the votaries of the regime, the opposition, in whatever form this may be lingering, is undoubtedly having a very bad time of it. Only the other day, a message, said to be "the first completely uncensored message from Soviet Russia in the last ten years" was made available to the "Sunday Chronicle". It is purported to give the truth, the whole truth about Stalin's amazing ten-year reign of terror hitherto hidden from the world and about the millions of people driven to exile, slave labour, starvation and death.

Evidently dictators, whether socialist, communist, or fascist or anything else, will have very little to do with the detailed studies of criminologists or their scientific and necessarily reasoned pursuit of causes of, and cures for, crime. Dictators will make their own crimes and apply their own cures. When criminologists argue, dictators behead, extirpate or otherwise eliminate those whom they may occasion to class as criminals. I quote the following for the reader's information from the report just mentioned.

> One simple test should suffice to prove the essentially terroristic character of the Stalin era ; namely the use of death penalty for "crimes" which in civilized countries are misdemeanours.
>
> Offences which at one time or another during the 1927—37 decade were made punishable by death include :
>
> Killing a cow without official permission ;
>
> Hoarding copper and silver coins ;
>
> Stealing State property (in the U. S. S. R. this really means theft of any kind) ;
>
> Attempting to leave the country without permission ;
>
> Refusing to return to the U. S. S. R. from foreign countries when ordered to do so ;
>
> Agitating in any manner against the Soviet system of government and economy.

The balance-sheet of ten years of Stalin's reign is meaningless if it does not include the following on the debit side :

Dispersal of the opposition—This, the opening scene of Stalin's overlordship, involved the exile to harsh climates and distant areas not merely of the leaders (Trotsky, Zinoviev, Kamanev, Radek, Piatkov, Rakovsky, Preobrazhensky, etc., etc.), but tens of thousands of their followers.

The report stresses other features of the regime such as Ordeal of Political Exiles,. Engineerbaiting, Liquidation of the Kulaks, Children left to die, Mass Executions of Scientists, Police as Taskmasters, Development of Forced labour, "Valuta" Tortures and so on.

This has obviously the look of an interested report or propaganda but there is no denying the fact of the executions which take place from time to time. Apart from the terroristic nature of the regime, what is appealing to Indian minds is that of all countries, Russia alone has been the most boldly tackling the problem of poverty. Its ways and means, however, seem to be divorced from sane and sober considerations.

There is undoubtedly the ghastly spectre, the eternal problem of distribution, ever staring in the face of humanity. Poverty is a curse and a blot to our civilization. Religions have tried to solve or shelve the problem and now theorists strive in the same directions. The latter may enthuse over their own achievements but there, as ever, human attempts must remain imperfect. There is no magic cure for either poverty or crime but rational thought of a gradually enlightened humanity should achieve, in degrees, ever so small, a better state of society. Fanaticism only retards the growth by unduly hastening processes that have to take time to evolve healthily.

Theorists who would shelve the problem by magnifying difficulties on the way err on the other side. If there is any problem to which humanity has to apply itself whole-heartedly, it is this. A society that cannot provide even *'dal bhat'* (bare food) to a great section of its members has little to be proud of. Non-violent methods should be found to ameliorate the conditions of the masses. When found, they will have to be applied with none of the fanatical zeal of the communist but with the hopefulness of the free-minded scientist.

Sec. 3. Political organization and the criminal—Theories of government—Inefficient and corrupt government on crime — Influence of militarism and war — The Political future of the human race.

In one sense it is true that the criminal comes entirely into being with political organization of the human race. There could be none without such organization. Only after governments came into being were certain acts stigmatized by the law as criminal.

"But in addition to prescribing what acts are to be stigmatized as criminal," says Parmelee, "the government and the political organization in general are among the numerous factors which determine how many crimes are to be committed, and by whom they are to be committed. The goverment is a direct cause of crime when it is maladministered in such a fashion as to be an immediate factor for criminal conduct. It is an indirect cause of crime to the extent to which it creates conditions which encourage criminal conduct and fails to provide conditions which would prevent such conduct."

I have already stated that the conception of crime and the criminal has undergone changes. A perfectly allowable act becomes a crime and a hideous crime may once have been even a virtue. Ever since society came to exist, man began to wonder how best to organize it and administer it according to the conception of the particular age.

Before the merits of any system could be fully debated and the system adopted, some person or persons by virtue of superior brain or physical strength assumed leadership and dictated affairs. When such persons terribly shocked people's feelings or otherwise offended them, voices, feeble or strong, arose in protest.

The prophets and seers, saints and *Avatars* who were successful in moulding political organizations laid claim to have come to administer the society in the name of God or gods. In a theocracy, as a matter of course, sins and crimes overlapped and some forbidden acts were offences against God or the gods and some offences against man. The codes were alleged to have been derived directy from a divine source and as such they were considered immutable. The messengers devoutly believed in their holy origin and so considered them as binding the entire human race. Hence unfortunately out of a mistaken sense of piety arose intolerance in the name of God, which led to feuds and bloodshed. The criminal was, as I have said, drastically schooled in this world and was then destined to another punishment in the life hereafter. The criminal had his position irrevocably defined and his treatment also could not be modified by man. It is useless to argue either for or against the criminal in such a regime and criminologists apparently had no place in it.

Fortunately for humanity, separation of the Church and the State is becoming more and more complete. It is now entirely with secular organization that we have to concern ourselves.

The various forms of government affect directly the penal laws. Under a monarchical system the penal law will jealously safeguard the rights and interests of the reigning dynasty, and the more despotic the monarch, the larger will be the portion of the penal code which is devoted to offences against him and his interests. Similarly under an oligarchy, the penal code will be devoted largely to safeguarding the rights and interests of the dominant class. To the extent to which the government is democratic will it be devoted to protecting the interests of society as a whole.

The political organization of the world as a whole or of the surrounding states is also of great significance. With nationalism reigning supreme, as at present, there is a vast amount of warfare the effect of which will soon be discussed. If nationalism gives way to internationalism or sectarian religions to humanitarianism, or the world-state comes into being, the penal code will be gradually transformed and possibly in the course of centuries, the happy conditions portrayed by Mr. H. G. Wells and others may come into being.

Theories about the functions of government have varied from extreme to extreme quite as much as anything else which is human.

At one extreme is the individualistic type of theory advocated by the *laissez faire* philosophers. At the other extreme is the socialist theory advocated by the socialist philosophers. According to the former, the only function of government is to regulate the conduct of the individual to the minimum degree necessary for the maintenance of order, but to undertake no economic or other social functions whatsoever. In the latter, government is supposed to extend its economic activities as far as may be considered to be conducive to social welfare.

According to the individualistic theory the state is not at all or is only to a very slight degree and indirectly responsible for criminal conduct. It is directly responsible for such conduct to the extent to which it fails to maintain order.

A perverse extreme in this line is anarchism. Government and law, according to the anarchists, in their very essence, consist of restrictions on freedom, and freedom is one of the greatest of political goods. They seem to indicate that government and law are evils which must be abolished if freedom is our goal. Anarchism, of course, effaces criminality, for if there be no law, there would be no act punishable under it at all. Undoubtedly freedom is the supreme aim of a good social system ; but even on this very basis anarchists' contentions will, on close examination, be found to be very questionable.

Bertrand Russel has gone into the anarchist's position in chapter v. of his book, *Roads to Freedom.* His arguments are plain and simple but convincing. I shall only touch on a few aspects pertinent to our enquiry here.

Let us consider the question of private crime. Anarchists maintain that the criminal is a product of bad social conditions and would disappear in such a world as they aim at creating. There may not be crimes against property in the shape we now see but what about lunatics who are homicidal ? And from the lunatic to the sane man, there is a continuous gradation. Even in the most perfect community there will be men and women, otherwise sane, who will feel an impulse to commit murder from jealousy.

Respect for the liberty of others is not a natural impulse with most men; envy and love of power make it a pleasure or sport for one to interfere with the lives of others. The physically stronger or the intellectually superior persons may oppress the weak and the dull. We have only to look at the animal kingdom to see what form such oppression might take. The instincts inherited from the animal kingdom will still tend to find play.

The truth would seem to be that all law and government is in itself in some degree evil, only justifiable when it prevents other and greater evils.

According to the social welfare theories, the state is responsible indirectly for criminal conduct to a varying degree. And according to the *socialist* theory it is almost entirely responsible, both directly and indirectly. The individualistic school, in other words, point to the immutable human traits which cannot be influenced by political means and assumes that criminal conduct is inevitable and permanent. The socialists insist, to the contrary, that criminal conduct is largely preventable, and would exist only to a slight degree under the socialist state.

I need not pursue this topic farther. I refer the reader to the theories about crime and criminals I have set forth already. The truth evidently lies midway between the two opposing schools, either of which only emphasizes its own favourite aspect. The whole problem is bound up intimately with what the state thinks and does and also what obvious duties it shirks. It should not meddle to the annoying extent of depriving its citizens of personal freedom, nor should it leave criminal conditions to flourish where it can usefully intervene.

Civilized governments are, however, performing more and more acts promoting or supposed to promote social welfare. Sanitation, hygiene, town-planning, education, control of drugs, etc., etc., are now being directed and managed. All these factors, again, as we have seen, influence criminal conduct.

Yet government can be a direct cause of crime in some ways. It may give rise to crime because it is a bad government, or because, even though a good form of government, it is badly administered. Much depends, of course, on the time and place and there is hardly any one form of government that is good for every people or any one way of administering one rightly.

Political corruption in the administration of the government is itself a form of crime. It produces gross inefficiency and vitiates the efficiency of the law in suppressing crime. Checks and safeguards against dishonesty are necessary for good government and I shall emphasize this point throughout the present work.

We shall revert to these topics when we consider towards the conclusion of this work, the various ways in which we can improve our methods of treating crime and criminals.

The influence of war and militarism may be considered here. The effects of war are so complicated that it is difficult to analyse and measure them accurately.

War is an expression of human spite, greed or despair. No other animal species suffers from such a mode of organized fighting. That one species eats up another in nature can hardly be likened to human war. War is waged by one section of humanity against another. It is confined to one species and does really mock at all other achievements mankind can take pride in. All that man has achieved by science is prostituted to a base end.

Warfare inevitably engenders a vast amount of hatred and vengeance towards enemies. It is usual to find recorded criminality falling during pendency of a war. This is claimed by writers as an apparently good tendency ; but there are intermediate factors. For example, many of the unwanted and useless parasites are drafted on to the battle-field. War thus becomes a substitute for crime for these persons. The apparent diminution in recorded crime may also be due to the fact that ordinary crime receives less. attention.

Militarism influences crime during times of actual warfare as well as those of peace. Conscripts and volunteers gain on the score of discipline which encourages to some extent the virtues of obedience, orderliness, regularity, etc. On the other hand, the organization itself was of such a character as to destroy individual initiative, sense of freedom, sense of consideration for others including the common civilian class and to develop servility in the common soldiers and a domineering spirit in the officers. Things have been changing now and a 'friendlier contact is now sought to be established between the officers and private soldier class.

Military life, however useful it may be to dictators and others, or even at the present moment to each separate state, is ultimately in direct conflict with the aim of all humanists who will be glad to see the birth of a world-state in which personal autonomy will be the rule and each individual will find expression of life in the way in which his personal qualities may unfold without let or hindrance.

Writers have differed as to the criminality of the soldier class as compared with that of the civilian population. Some say the criminality of the former is higher than that of the latter. This may be disputed when the age of the male population of both the classes is taken into account. The soldier is, however, guilty of various offences, such as, insubordination and malingering which the civilian cannot commit. Others who are admirers of the system extol the discipline and show how in many cases the criminality of the soldier is actually less. Anyhow, righteousness enforced in the way it is, if at all, is not the goal at which society is aiming. We cannot admire a world in which every individual will live and work under the eyes of his dictator or sub-dictator.

Turning to the indirect and much more far-reaching effects of war and militarism upon crime, we have to note the spirit of lawlessness and violence which is encouraged by a war. This spirit may and does persist for some time after the war ends. War arouses the passions of hatred, vengeance, envy, which issue in deeds of violence.

"Reference has already been made," stated the international commission that inquired into the causes and conduct of the Balkan Wars of 1912-13 as quoted by Parmelee, "to the reflex psychological effect of these crimes against justice and humanity. The matter becomes serious when we think of it as something which the nations have absorbed into their very life,—a sort of virus which, though through the ordinary channels of circulation, has infected the entire body politic. Here we can focus the whole matter,—the fearful economic waste, the untimely death of no small part of the population, a volume of terror and pain which can be only partially, at least, conceived and estimated, and the collective national consciousness of greater crimes than history has recorded. This is a fearful legacy to be left to future generations."

A commission on the subsequent Great War would only have shown these effects more forcefully. What a future war on a yet greater scale would do can hardly be imagined.

The economic effects of war influence crime equally largely. War makes a nation poorer. Goods produced for consumption in warfare are only wasted and do no good later. There is a shrinkage of capital owing to the disturbance and naturally a shortage of labour owing to the destruction of human life. The most able-bodied and vigorous section of the population suffers loss and damage and thus the productive labour force is diminished. There may be a period of apparent prosperity following immediately but it would not stand on close scrutiny. Then there are loans that hang on governments who ultimately raise funds by increasing taxes. These would hit the bulk of the population and badly influence crime.

The military budget is staggeringly large almost in every country and unfortunately present conditions only tend to show that it must increase. Mutual jealousy and hostility are keeping each independent state in a state of preparedness for war entailing immense outlays on unproductive labour. A fraction of such cost could suffice to provide society with an education adapted for promoting better relationship.

Sec. 4. Race and crime—Religion and crime—Science and crime—Art and crime—The press and crime—Advance of civilization and crime.

The previous discussions do not by any means leave out civilization in its relation to crime. As a matter of fact, they embrace very important aspects of civilization. In this section I propose to survey the other aspects of civilization and civilization itself generally in their relation to crime.

By 'race' we mean, according to Haddon, 'a group of people who have certain well-marked features in common,' the group being large and the characters to be considered being, those of hair, skin, colour, stature, shape of head, shape of face and shape of nose, etc., etc. These criteria are in the main empirical.

Briefly put, racial development depends on heredity and environment. What are called races are different groups of mankind that peopled the various parts of the earth and evolved into distinct ethnic types by virtue of slow adaptation to special surroundings and of inherited tendencies. All types of men, from the most savage to the most civilized have such general likeness in the structure of their bodies, and the working of their mind as is easiest and best accounted for by their being descended from common ancestors. The various races are capable of intermarrying and forming hybrid races of every description.

Some writers, however, accentuate the variation between the races. They contend that not only are there great physical but also great mental differences between the races which largely explain the cultural differences between the peoples of the world.

These writers proceeded to account for differences in the criminality of the peoples and inhabitants of the different parts of the world by racial variation. Lombroso has given much weight to racial factors in the causation of criminality. He also characterized peoples as racially superior and inferior. We have seen the hollowness of many of Lombroso's contentions and need not attach undue weight to his assumptions in this respect.

Parmelee observes :

> No differences between the brains of the different races have been found which are sufficiently extensive or of so crucial a nature as to justify the belief that there are any great differences in the intellectual traits of the different races. Furthermore, observations which have been made of the processes of thinking of the different races indicate that these processes are much the same

the world over, the apparent differences probably being explicable in large part if not entirely by cultural variations.

For our purposes here, what is important is the general temperament of the races. It is very doubtful if there are any material differences in the instinctive traits of the different races, for, as we have studied, human instincts are deeply rooted not only in anthropoid but also in mammalian and vertebrate structure and organization. The states of feelings and emotions would likewise be similar in the main. There may, however, be some variation noticeable in the make-up of the different races.

Thus, in the matter of temperament, the African Negroes remind us of several characteristics of Lombroso's born criminal. They are fitful, cruel, sensuous, indolent, improvident and lacking in self-respect. The Oceanic Negroes are more cruel than the African ; to kill as many victims as they can and gather heads is a test of courage and strength. Tribes of these inhabit Malaya and the Eastern Archipelago.

Races in India are free from the Negrito population. There is Mongolian mixing in the North-Eastern Part of the country, Nepal and the Gangetic plains. The Mongols are ordinarily good-natured and have a genial temperament but they are indolent and are said to have low moral standing, if by that we mean anything. The Burmese are indolent and improvident but are hospitable and kind. In India the racial type has been largely varied and superseded by that of caste.

We may conclude this topic by saying that whatever variation in criminality there may be noticed among different races would be due in part to existing climatic differences, and in part to differences in the emotional traits which have been caused by climatic conditions in the past. As Parmelee observes, 'it is well to beware of extreme statements of the influence of race in which its influence is obviously or in all probability being confused with the influence of other factors'. We have to remember that human races can all interbreed freely and that they separate and reunite as clouds do. We shall be saved from many evil prejudices if we remember this. Nations are often confused mixtures; the components being now inseparable.

To deal with the influence of magic and religion upon the origin and early evolution of crime, we have to indulge in a kind of fascinating 'guessing game'. Primitive man probably thought very much as a child does, that is to say, in a series of imaginative pictures. Probably rather early in his career upon this earth man began to think about the nature and causes of his environment and of himself. He conjured up images in his mind and he acted in accordance with the emotions they aroused, almost like a child or an uneducated person of to-day. He was no doubt haunted from an early period by a certain vague sense of wonder and bewilderment. As a result he evolved the animistic ideas which underlie all religious and magical beliefs and practices. He was nearer to the animals and as such he supposed them to have motives and reactions like his own. He could imagine animal helpers, animal friends and enemies, animal gods. Then were there the forces of nature with which he had to contend or reckon. The strangely-shaped rocks, the surging seas, the thundering clouds, the whirling cyclones,—all these and a host of other forces of nature seemed to act and react to the weal or woe of himself. Then were again the bewildering phenomena of sleep, dream, insanity and death. All these naturally led to belief in the existence of superhuman agencies,—not only alive but even hostile and vengeful. He might have deduced from these the existence of impalpable counterparts of the bodies of living beings, which were capable on occasions of severing their connection with body, at death finally departing from it to live on as ghosts in an underworld. Stories and legends on these assumptions were invented by fancy and passed round.

Primitive people had thus a crude science of cause and effect. They were not very critical; they very often associated an effect with something quite alien to its cause by a sort of superficial analogy. "You do so and so," he said, "and so and so happens."

The 'Trial and error method' corrected their crude assumptions in many cases but there was a larger series of issues of very great importance to primitive men, where they sought persistently for causes and found explanations that were wrong but not sufficiently so as to be easily refuted. They tried to control or compel, or to coax and appease the deified forces of nature on which they felt themselves so dependent and having no material means whereby to do so, they invented appeals and invocations, charms and incantations to bring about the desired effects.

As these effects themselves were indeterminate, and mostly subjective, belief in the efficacy of these magical performances could not be shaken and were thus suffered to persist.

Magical methods, then, postulate the existence of spiritual beings which can be coerced whereas religious methods postulate that of spiritual beings which may or may not be coerced but which may possibly be persuaded. For these reasons the two methods have gone side by side in many cases. I need hardly go into details in this direction. The reader is referred for this interesting topic to the well-known work by J. G. Fazer, *The Golden Bough*, a monumental work on early superstition, religion and society.

Magical methods were obviously based upon false analogies. To injure a man by treating his hair with incantations may not commend itself to a modern man but the absurdity was not clear to primitive men and is not so even to many human beings at the present day. The gradual disappearnce of magic has been due to the demonstrable failure of magical methods and the spread of scientific knowledge with regard to the true, at any rate, truer, correlation of events in nature.

Religious methods have been of such a nature as to propitiate the alleged spiritual beings. These have included prayer, oblations and sacrifices of all sorts and adulation in various forms of ceremonial worship. The alleged supernatural Agency is held in awe and nothing is *demanded* of it but only *requested* or *humbly prayed* for. Evidence of its *pleasure* or *displeasure* is easily gathered from natural events and the request abandoned or reinforced. A refusal in this world may be held to imply a promise in the other world to come. This obvious advantage which religion has over magic, namely, the excuse it can offer in cases of repeated failure of religious methods by assuming that God or the gods are unwilling to grant particular requests of man, will possibly help the persistence of religions for a long time to come. Nevertheless, the advance of the sciences and methods of critical study has greatly undermined many untenable dogmas of religion and prepared mankind to approach the study of religion itself on comparative and evolutionary lines. Unfortunately for mankind, this frame of mind has only evolved lately and not until millions of lives had been lost and oceans of blood shed by intolerant enthusiasts and unthinking fanatics.

I cannot dilate here upon this aspect of religions without boring and perhaps antagonizing my readers who may be votaries of this religion or that, but I should expect everybody who has any pretension to education to study the philosophy of religion in any modern treatise and widen his outlook. The modern man should take a true perspective of religion. There is much in every religion that mankind may profit by.

To return to our subject, I must apologise for the above digression but think it was necessary for a true understanding of the important part religions have played in social control in general and in penal treatment in particular.

Writers have discussed, for example, whether an act was forbidden because it was wrong in itself or because it was displeasing to a spiritual being. Some have believed that the earliest crimes were determined only by religious and magical ideas, and the moral ideas, in the strict sense of the term, (if there is one !), had no influence until later.

Custom, without a doubt, was the earliest and the most important factor. Later appeared magic and religion to give their sanction to certain customs, to modify others and perhaps to suppress yet others. Moral ideas also may have played a part as early as magic and religion.

It was thus under the ægis of religion that the criminal code was born. In a minor way other factors may have helped its seeds to sprout; it remains nevertheless true that it was religious thought, religious fears and feelings which public punishment had to be fathered upon.

The catalogue of "crimes first punished by the community" has been variously reconstructed by different writers. Steinmetz and Oppenheimer have respectively catalogued such crimes as (1) Witchcraft, (2) Incest, (3) Treason, (4) Sacrilege and (5) Miscellaneous offences, most of which were offences against sexual morality but including also poisoning and breaches of hunting rules, etc., and (1) Treason, (2) Witchcraft, (3) Sacrilege and other offences against religion, (4) Incest and other sexual offences, (5) Poisoning and allied offences, and (6) Breaches of the hunting rules.

We must bear in mind that these primitive people did not possess the art of writing and since there was no clearly defined code, this order of precedence need not be taken too seriously. Many acts were subject to private revenge, this being sanctioned by the community. The primitive judicial process was a sort of gathering of evidence by the elders of the group or it may have been an ordeal inflicted upon the suspected person or it may have been some magical detection of the culprit. We shall revert to this topic later.

I have said how magic has lost much of its influence and religion, although losing much of its, is still persisting in various forms. However ardent its advocates may be, the criminologist and certinly the scientist must break away at least to the extent that these laws are considered by them originally to have been man-made and, as such, it must be within their competence to criticize and amend or alter them to the best interests of humanity. To postulate eternal validity for any set of laws is, according to them, to cry halt to all investigation.

As a matter of fact, however, Judaism Christianity, Islam, Brahminism etc., etc., have all been state religions and still maintain a tenacious grip. Religion in such cases dictated laws and laid down the criminal procedure. Even now-a-days sporadic theocracies can be found. A vestige of the old influence lingered even in modern and otherwise secularized democracies. Thus, for example, English judges like Hale have regarded Christianity as the national religion of British Parliament and it was part and parcel of the laws in England. Gladstone confirmed this in 1863 and Lord Mansfield laid down the dictum,—"the essential principles of the revealed religion are part of the Common Law." American Courts have expressed the same view in pursuance of English precedent. The struggle between the Church and the State culminating into gradual secularization of the latter has an interesting history which every educated man should know. Kemal in Turkey has succeeded in modernizing institutions to an extent inconceivable by and abhorrent to the protagonists of the old ideas. The tendency is almost universal and foreign inpact and intercourse are already accelerating this.

Representatives of religion frequently assert that irreligion is a potent source of crime. Religion according to them, as signifying the worship of the one (or many) who is the seer and the mover of the inmost soul of man must engender feelings opposed to criminal tendencies. It indicates a sense of duty to Divinity of 'unlimited competence' that keeps the poor from slipping downward to crime. Undoubtedly there is some truth in this. The bulk of the populace finds consolation in the order of things, however unsatisfactory, by the reflection that the last and supreme basis of all phenomena lies in an efficient cause to whom appeal may be efficacious but insults fatal. In this sense, it must have prevented much of the friction which could materialize in private or public crimes against property. It exerted preventive influence too in another way. It postulates an all-seeing God and thereby accentuates or sharpens the watchful inner conscience. We have heard of the devout man who was asked to do a thing at a place so secluded that nobody could see him doing it but who came back and reported that he could conceive of no such place as God would be a sure witness! The only unfortunate thing about these two good points is that in the former case, viz., where the state identifies itself with one religion, other religionists may suffer from intolerance, whereas in the latter case, the conscience is adjusted to irrational beliefs some of which may be definitely injurious and many obviously out-of-date. Those who deprecate religion are not slow in pointing out the red pages of Ecclesiastical history, the blood of martyrs shed, etc., etc., or the crude hocus pocus and the meaningless observances which people respect in vain. The real truth may be said to lie in that religion did its parts well at the particular epochs in which it arose and that it represented an honest and sincere attempt to attack the problems then confronting humanity. Whether mankind would have fared better or worse without it will remain ever disputed between antagonists and advocates of religion perhaps for all time to come. Science also has its own beliefs though only less ardent in view of the continuous progress which of necessity overwhelms fixed ideas. We believe less as final, not because we know less but because we know more.

Undoubtedly all the great religions have contained extensive accretions in the way of moral commands and guidance for their adherents. These moral teachings are ingrained deeply in individual make-ups and are reinforced by the emotional factors of religion. They are further reinforced in nearly every cult by the intimidation attempted by means of supernatural punishments. Every religion worth the name deprecates most of the crimes abhorred by civilized people. In this sense, it becomes a question of considerable importance as to what are the moral teachings of a religion. Religions differ greatly in this matter although there is some agreement in general, and so it is difficult to generalize with respect to the preventive influence of all religions. Unfortunately for humanity, people do not proceed to compare religions dispassionately with a view to find out for themselves which they should follow but are born in one and live and die in it. As a matter of fact, however, a belief in the supernatural origin of a religion suppresses all attempts to criticize it on rational principles. Furthermore, this one factor alone is mainly responsible for untold human suffering and unhappiness because it enjoins upon the religious devotees militant propagandism, asceticism, penitential pain, minatory terror of supernatural penalties, etc.

India continues to be a great stronghold of religions. Brains in the East have ever been speculative and philosophical. Almost all the religions in the world have votaries here and the ardour of one section is zealously or jealously equalled or even surpassed by another. Despite the contentions of the differing votaries, criminality is diffused and the jail population includes every section. It is futile to attempt to apportion blame, for religion is only one factor and exerts influence to the extent of its ability along with the other factors we have already studied.

The relations between religion and science have not been very happy. There have, however, been some favourable utterances by present-day scientists like Sir James Jeans and E. S. Eddington, and attempts of some Indian scholars to interpret the Shastras or the Gospel or the Koran in terms of modern science. Science by its very nature cannot compromise its progress by completely recognizing the eternity of validity of religious explanations of nature or conduct of human affairs unless such explanations stand the scrutiny of critical examination.

Now let us pass on to the influence of science on crime. The immediate effects of science on crime can be easily seen from the technical and scientific means that have afforded more scope for some criminals. Science, however, has also furnished the Police and the Courts with more effective methods of detection and determination of crime. On the whole, science has been more effective in the suppression and prevention of crime than in rendering crime more facile.

I have studied the 'scientific method' in the introductory chapter and shall only state here that all that the criminologist has done, is doing or proposes to do, in the matter of ascertaining the cause of crime, the nature of the criminal and the method of better treatment, has been possible because of science and its progress. I have also already indicated the extent to which criminology is indebted to the various sciences.

It is often alleged that science has given rise to a good deal of immorality. It is argued mostly by votaries of particular religions that science has disputed the validity of most of the old ethical ideas and thus encouraged crime. This may have been so at this stage of the conflict because science has resulted in a more or less complete overthrowal of the old code of conduct without the substitution for it of a new code. Brains, however, have been active in devising on a rational basis new codes of personal conduct. As a matter of fact, science makes possible an understanding of the physical conditions in which mankind lives, of human nature, and of the social relations in which men live. The future health, wealth and happiness of mankind has been the subject of study of trained intellects and except in a few respects such as war and poverty which still persist in all their horrors, mankind is none the worse. As to personal codes or ethics of social behaviour, I quote only a few attempts. We have the *positivism* of Auguste Comte who proposed to substitute for God the *Grand Etre* (Great Being), Humanity, as the object of devotion and worship. Let us transfer, he proposed, the religious emotions from the Deity of the traditional religion to the conception of humanity as a whole. The *Monistic* Philosophy and Ethics advocated by Haeckel, Spencer and others, Humanitarianism, Cosmopolitanism, Socialism and a host of other *isms* represent attempts to arrive at ethical standards conceived scientifically from different angles of view.

Art has also some influence on crime. Crimes and criminals are depicted in works of art, although in many cases, types are grossly exaggerated. In literature, crimes of passion are frequently represented. These take the form of villains arousing jealousy is good loving husbands who murder wives (Othello and Desdemona), rival lovers coming to fatal duels, wronged heroes taking revenge, etc., etc. Detective stories almost always describe unusual crimes and unusual methods of detection. The exaggerated types of crime or vice are more dramatic and thus hold the imagination more powerfully. Sex novels and literature depict sexual orgies and exciting situations and in many cases verge on obscenity.

The public is given a false impression in many cases as the true nature of crime or criminals is almost unknown to the writers who have had little opportunity for firsthand observation, no scientific training and mostly exuberant imaginations and undisciplined taste. Exceptions as in cases of writers like Dostoievsky, who had a keen insight into human nature and had ample opportunities to observe criminals, are rare. Undoubtedly, much of this kind of art is responsible for the public being mostly ill-informed as I have said in the introductory chapter.

By glorifying crime and criminals, the artists in many cases gratify the vanity of criminals and stimulate a desire for emulation in the minds of the would-be criminals. In this sense, art may be said to have some amount of suggestive power. The Cinemas by showing unusual ways of committing crime may almost be suggesting it to those who frequent them. On the other hand, such art sometimes is said to have a cathartic influence of some social value. Thus while the same story may quicken an impulse to crime in one, it may satisfy, vicariously so to speak, the impulses of another by relieving him of them. This effect of art may be likened to a process of vaccination as Parmelee puts it, inasmuch as the indivdual is saved from the worst forms of crime and vice by experiencing them in a milder form in works of art.

It must be said in all fairness that a large amount of artistic work is truly moral in the sense that it ultimately depicts the triumph of virtue over vice and righteousness over crime. Art is a sort of running commentary upon existing conditions. The conditions influence art as art influences subsequent conditions.

The influence of press on crime is also considerable. The growing popularity of the newspapers and magazines is a sign of the growing interest of the modern man in affairs of others and of other places and by far the largest part of contemporary information is gleaned through this source. They constitute an important educational agency. The sensational press gives accounts of lurid crimes, suicides, etc. and thus has a suggestive influence. Its very popularity shows its power.

Hans Gross studied the influence of the Press on crime and also indicated how best to handle it and make it yield good in place of evil. In tracing and tracking absconding criminals, in organizing public opinion against prevalent crimes, in commenting on the mode as to how the problem of crime is being tackled and in generally moulding public opinion, the press can do much towards mitigation of crime. The freedom of the Press is one of the essential features of civilization and except for a few very grave reasons, its liberty cannot be curtailed with any good to society. The influence of civilization generally on crime can now be summed up in a few words.

The complexity of human life owing to the progress or civilization has necessitated regulation of individual conduct in many more directions now than in the past. A much greater variety of crime (considered in a wide sense) is now being committed while the efficiency of the agencies of law and of criminal administration has been bringing more criminals to book than before. The apparent increase of crime in volume in modern times in civilized countries is due largely to this. It is also true that increased nervous strain due to the complexity of life may have disarranged the balance of many more people and led to a larger amount of crime.

CHAPTER VI

THE TYPES OF CRIMINALS

Classification of criminals—by Lombroso, Ferri, Garofalo,—by others—The problem of classification—Conclusion.

The previous chapters have, I hope, given the reader to realize that there are various viewpoints from which the criminal could be and has actually been studied. The outcome has naturally been that criminals have been variously classified. We shall refer to a few only of such classifications.

Lombroso, as we have already seen, was engaged all his lifetime in firsthand studies of criminals. He classified these as follows :

1. Born Criminal.
2. Insane criminal.
3. Criminal by passion.
    - (a) Political criminal.
4. Occasional criminal.
    - (a) Pseudo-criminal.
    - (b) Habitual criminal.
    - (c) Criminaloid.

I have already summarized Lombroso's theory of the born criminal. I refer to the detailed discussions in Chapter II.

By insane criminals, Lombroso means as do many others, those who are impelled by various types of insanity to commit crime. Homicidal mania, for example, leads to murder, kleptomania to theft, etc. In such cases the internal urge would outweigh deliberate calculation in commission of a crime. Some of these, however, as Parmelee observes, are cases of amentia rather than of insanity and Lombroso failed to distinguish between the two. Amentia is congenital feeble-mindedness and its neural basis is subnormal cerebral development. This is due in many cases to hereditary but sometimes also to environmental forces. Insanity is, however, almost always if not inevitably a result of dementia which is feebleness of mind in which the full development of the cerebrum has not been prevented but in which a degenerative process has set in after it has developed. Insanity may sometimes be the result of neuronic derangement which does not necessarily result in dementia.

Criminals by passion are characterized by a high degree of affectability. Unusual circumstances give rise to a passion which leads them to commit crimes of violence. Lombroso put the political criminal under this head to indicate that he is also urged by passion although in this case altruistic ends or even impracticable ideals may be discerned. We know of such passion being stirred here in India only too well.

The class of occasional criminals is very broad. This term of his is rather misleading because of the diversity of kinds of criminals to which it is applied. Of the three sub-classes, the pseudo-criminal is a normal person whose crimes are rather juridical than real. Technical offences which do not disturb the moral sense are included in such crimes. By criminaloid, Lombroso meant the less degenerate born criminal. The criminaloid therefore occupies a position between the occasional and the born criminal.

Ferri, another leader of the Italian school, classifies criminals as follows :

1. Insane criminal.
2. Born criminal.
3. Habitual criminal.
4. Occasional criminal.
5. Criminal by passion.

This classification resembles that by Lombroso in many respects. Ferri, however, recognizes the habitual criminal as a distinct type. The occasional criminals, according to him, are those who "have not received from nature an active tendency towards crime but have fallen into it, goaded by the temptation incident to their personal condition or physical and social environment and who do not repeat their offence if these temptations are removed". He also refuses to recognize the political criminal who, according to him, is only a pseudo-criminal and not a true criminal. This conception is bound up more or less with the theory of evolutive as contrasted with atavistic crime.

Garofalo, yet another leader of the Italian school, has devised a classification of his own upon a psychological basis. He concedes :

1. Typical criminals or murderers.
2. Violent criminals,
    (a) Endemic crimes.
    (b) Crimes of passion.
3. Criminals deficient in probity.
4. Lascivious criminals.

The typical criminal is one "in whom altruism is totally lacking". Hence he will be a thief or murderer or commit any other crime that may come his way. A violent criminal is a milder one. He lacks the sentiment of benevolence or pity like the typical criminal. The first sub-class includes "authors of such crimes against *the* person as may be termed *endemic* or in other words, such crimes as constitute the special criminality of a given locality. Modern examples of this sort of criminality are found in the vendettas of the Neapolitan Camorrists or the political assassinations of the Russian Nihilists". The second sub-class includes those that commit crime under the influence of passion. The criminals deficient in probity commit crime against property. The lascivious ones are those who commit sexual crimes and offences against chastity.

A host of other writers have attempted similar classifications. Havelock Ellis, for example, derived his from Lombroso and Ferri. Aschaffenburg has a long list.

Parmelee attempts, after criticizing classifications by different writers, to base one in the main upon the causation of criminality, 'for the principal use of such a classification is to aid in planning the treatment of criminals'. He would have :

1. The criminal ament or feebleminded criminal.
2. The psychopathic criminal.
3. The professional criminal.
4 The occasional criminal.
    (a) The accidental criminal.
    (b) The criminal by passion.

5. The evolutive criminal.

(a) The political criminal.

We have detailed the various classes already. No. 1 and 2 would seem alike but Parmelee would have No. 1 take the place of the born and instinctive criminals of the older classifications while No. 2, according to him, would include criminals who commit crimes under the influence of a distinct psychosis. These would take the place of the insane criminals of the older classifications. The third class would include the professional and the habitual criminals.

It would appear from the foregoing discussions that no classification is entirely satisfactory. This only brings us face to face with the difficulty of classification itself. It is by no means easy to classify the members of any large human group, owing to the great diversity of types in any such group. Again there are the viewpoints to be considered. What should classification be based on ? Take, for example, English style and consider how variously it could be classified. Thus with respect to the number of words, it may be called concise, sententious, laconic, terse, copious, verbose ; with respect to arrangement, natural, inverted, loose, periodic ; with respect to the use of figures, metaphorical, epigrammatic, ironical, elliptical ; and with respect to use of ornament, elegant, flowery, ornate. We face the same difficulty and consequently, have the same diversity with respect to the classification of crimes.

It will not do to be too hair-splitting in our conception of the various sub-classes we have detailed. The word habitual, however, illegitimate, seems to have come to stay. It is loosely applied to include those who have been highly specialized such as pickpockets, those who are called professional criminals and those who commit crimes repeatedly whether by choice or force of circumstances. The occasional criminal is a more or less accurate though vague name for a partly indefinite group of criminals. They are those who commit crimes occasionally but not frequently, whatever these may mean.

Criminals can be divided on various other counts—age, sex, race, modus operandi, etc., etc. We shall study some classes at some detail in the next chapter.

CHAPTER VII

JUVENILE CRIMINALITY

Juvenile criminal defined—Necessity of preferential treatment of him—The growing literature on the topic—Childhood—The 'Evolutionists' and the study of the child—Further impetus by 'Psycho-analysists'—Extent and nature of juvenile criminality—Causes—Psychological and environmental—Right treatment, preventive and curative.

A century and a half ago neither the law nor the procedure respected tender age and it might have even evoked surprized wrath if any consideration were claimed for a youthful offender. The only limit of age that was at all regarded was of a child below seven who was considered as incapable of committing crime. A child of over seven could be subjected to all forms of punishment that were suitable for adults. Till comparatively recently children under fourteen years of age were being arrested, held in jail, tried in court, and punished much in the same ways as adult criminals. Only just over a hundred years ago (May, 1833) a boy of nine was convicted at the Old Bailey, of house-breaking and stealing two pennyworth from a cupboard and sentenced to death by Justice Bosanquet! The court had no other choice. Such was law! To modern minds, this was murder by the law itself.

The severity of the law had its counterpart in the severity of education. All work and no play; incessant inquisitorial supervision and hardly a kind word; the free use of the rod;—all these made Jack a very dull boy, a very disagreeable sneak and a very malicious bully. The prime qualification of a school master was not any depth of knowledge but the ability of wielding instruments of castigation. Thus when at Cambridge University a student applied for his degree as a master of grammar, he was required to provide himself with a rod and a palmer and to give a public demonstration of his skill upon a boy hired for the purpose!

Before we pass on to considering the psychic and physical make-up of the juvenile criminal himself, we shall dispose of two preliminary questions that may conceivably be asked. They are:

1. What is exactly meant by juvenile crime?
2. Why any preferential treatment of this problem, or rather, why all this ado about it?

Legally speaking, we would say juvenile crime is crime by a juvenile offender. Inasmuch as crime itself must by its very nature be the same in all cases, it is only the agent that will distinguish it for us. Roughly speaking, the human individual passes through initial stages successively known as those of the embryo, infant, child, juvenile, adolescent and adult. The stages are usually differentiated by years in age and their conception may and does vary in different societies. In the English Children Act of 1908, persons under 14 are regarded as 'children' and those aged between 14 and 16 as 'young persons'. The age limits of adolescent offenders are 16 and 21 and they are dealt with under the Prevention of Crime Act, 1908. In other countries either the nomenclature or the age limits or both do or do not vary. In the present study, however, when we are dealing with causes and treatment of juvenile crime, it must be understood that what is intended is a sociological study rather than a legal one. We shall therefore exclude the child upto the age before which he is legally 'incapable of committing crime' and include adolescents upto roughly 21 years of age. It has been customary to study juvenile crime but not particularly adolescent crime, in modern times.

After all, the emphasis is laid on the delicate stage of development at this period generally and not on the years specifically.

The second question, regarding special treatment of youthful offenders, did not arise previously at all, because a person who was held responsible for his actions at all was held so as either accursed or as a 'free moral agent', in either of which cases what mattered was the offence and not the man. The Classical Theory of crime rather advocated the inequity of any preferential treatment on such extraneous considerations as age or social position. Attention, however, came to be drawn to the exceptionally plastic nature of the juvenile mind and the physiological changes that occur at this period of life, and it has now been universally admitted that the juvenile requires more care and guidance than control and punishment. The literature on juvenile crime has since steadily grown in volume and notable contributors include Mary Carpenter (1), W. D. Morrison (2), Perkins (3), Thomas Travis (4), W. R. George (5), W. Clarke Hall (6), Henry H.

---

(1) Juvenile Delinquents : their condition and treatment. (2) Juvenile offenders. (3) Treatment of Juvenile Delinquents. (4) The Young Malefactor—a study in juvenile delinquency, its causes and treatment. (5) The Junior Republic. (6) The State and the Child.

Goddard (7), Cyril Burt (8), Dr. W. Healy (9), Dr. A. F. Bronner (9), Sheldon Glueck (10), Eleanor Glueck (10). Of these Goddard, Burt, Healy and S. Glueck have done admirable work in this field specifically. Maurice Parmelee (11), E. H. Sutherland (12), J. L. Gillin (13), H. E. Barnes (14), P. A. Parsons (15), and others in their general treatises have also touched upon the problem of juvenile crime incidentally. I need hardly mention names of such universally known thinkers as Lombroso, Aschaffenburg, Garofalo and Ferri who have also pronounced their views on this subject in their works generally.

To take up the juvenile offender himself now, we shall, especially to indicate his psychic make-up, trace him from an earlier stage. This will unfold the connected story of his mental evolution. Childhood, then, should be the starting point at which our studies are to begin.

The baby is a perfect criminal, so to say. I mean thereby that he is a supreme egoist. This egoistic instinct finds expression from very early infancy. He starts by only recognizing his own desires and subordinating to them all else. He is chiefly engrossed in his own physical needs and rages if they are not satisfied.

---

(7) Juvenile Delinquency. (8) The Young Delinquent. (9) Delinquents and Criminals, their making and unmaking. (10) One thousand Juvenile Delinquents: their treatment by Court and clinic. (11) Criminology. (12) Principales of Criminology. (13) Criminology and Penology. (14) The Repression of Crime. (15) Crime and the Criminal and Responsibility for Crime.

The theory of "Evolution" beside influencing thought in other branches of scientific study, necessitated the extension of psychology to the comparative study of animals, primitive peoples, children and abnormal persons with a view to discovering genetic relations between them and normal adults in respect of mental processes. Thus, whereas hitherto interests had chiefly been directed upon the normal adult mind, either deducing its characters from the supposed nature of the soul, or inducing its principles from empirical observation, interest has lately been centred upon evolutionary connections. A vast and growing literature on child psychology alone has already accumulated. Experiments have been and are being made upon creatures ranging from unicellular organisms to anthropoids and young children.

The original impetus thus imparted, far from spending itself, has steadily increased up to the present, every school of psychology drawing inspiration from the comparative observation of behaviour. The 'Behaviourists', for example, base all forms of behaviour in animals, all kinds of human conduct, no matter how socially desirable or morally elevated, on the foundation of a few native reflexes inherited by all members of the species. Like any other animal, man, according to them, starts life with a limited equipment of unlearned reaction-patterns to external stimuli ; and upon these are grafted an immense number of other behaviour-patterns, which make-up his learned equipment. All complex behaviour is explained by environmental conditioning, which results in the formation and reformation of habits as physiological as the inherited mechanisms themselves. In this view of matters, the child should be a focus of attention not only of the sentimental relatives but of thinking society in general.

The 'psycho-analysists' go still further and explore conditions of childhood to explain adult mental phenomena in many cases. One great source whence our morality is derived—and a much complicated one—comes from an introjection in the self of the earliest external moral forces, i.e., the moral attitudes and precepts of parents, nurses and other influential persons from whom the child first learns the distinction between right and wrong. By means of such introjection the individual comes in time, as it were, to carry in himself, as part of his permanent mental equipment, the moral standards of his environment. Recent studies in child analysis have shown that the foundations of the Super-Ego are laid at a very early age (before five) and these can be influenced only with great difficulty by subsequent experience. Some single experience, again, in very early childhood, may produce a persistent emotional bias ; so that, for example, a life-long horror of cats may result from an infantile encounter with a wicked kitten. Studies of some habitual criminals have revealed, likewise, that their constant warring with society was in reality a symbol of the hate they once felt for a harsh father or an older brother. The most fundamental preventive work, then, that can be done in Criminology would be learning to understand what experiences in childhood are really significant for later delinquencies and how to develop an effective means of putting that knowledge into conscious practice.

My references here to lines of child-psychology are only suggestive and I must now revert to what criminologists have thought about the child and criminality. Lombroso was led to err by his mistaken theory of atavism, as is already well-known. According to him the child represents an earlier stage in the evolution of the human species, so that in him are to be found traits, such as anger, vengeance, jealousy, cruelty, laziness, etc., which when manifested by an adult to the same degree are regarded as immoral and criminal.

It is a fact, however, that the child begins his life in total ignorance, owing to lack of experience and education, and without any moral training, and acquires character to the extent his *congenital traits* and the *environment* permit. These congenital traits may be marked by strength and weakness to great extents. Some children become so very angry that they get ill for days. Some betray cruelty and callousness. Nero, Louis XI, Charles IX are said to have exhibited such signs.

A child is usually incapable of comprehending abstract justice. Although at the age of seven, a normal child gets rough ideas of right and wrong, it is only about puberty that it begins having definite conception of the same. The child may know that stealing is dishonourable but may not know that counterfeiting, treachery and arson are penal. It knows that lying is wrong but may not know that certain lies, like fraud, become punishable under the Law. A child is thus free from criminal liability from the 8th to the 12th year in different countries.

The psychic processes leading to the awakening of criminality, generally speaking, are not very complex. Thus, although the child is itself considered not liable for anything done, it may form antisocial inclinations from apparently harmless practices.

Let us, for example, take a family in which there are two children, a boy of eight and a girl of six. The mother is fond of both and she has a quantity of sweets ready for both. The mother does not let them have the sweets every time they want these but beyond refusing them, she takes no care to lock the cupboard. Desire haunts the two and on one or two occasions the boy pilfers some sweets and shares them with the girl. The incident remains unnoticed and the experiment is repeated. Mother comes to notice this and one day the cupboard is locked. Both the boy and the girl have already acquired a habit and they disagreeably react to the locking of the cupboard. The boy, however, has sense enough to know that sweets are available at the stall around the corner but they have no money. Some coppers are observed on the father's desk and the boy pilfers a few pieces. If this goes unnoticed, the boy turns into a regular customer at the stall, although inclined to as little publicity as is possible. This tendency may persist if circumstances continue to favour it or may fade away as the result of healthy influences.

Adolescence is marked by impetuosity and lack of self-control. Love of enjoyment is also marked. Stealing is indulged in. If adolescents come by a little cash through their parents' carelessness or earn it in industrial life, they waste it in imprudent ways of enjoyment. Provocation induces thoughtless violence and physical strength freshly developed is the main incentive to assault.

Sexual crimes attain great prominence among the adolescents. This is due to the fact that they have not yet acquired much control over the newly awakened sexual impulses or found opportunities for normal gratification thereof. Puberty, the period when the first appearance of the procreative faculty is to be noticed, is characterized by profound physical and psychological changes. This period is decisive for the future development of the individual, and a knowledge of the processes connected with it is essential for educators and parents conscious of their duties.

We now come to causes in the environment. We can discover them and gauge their potency by a critical appreciation of actual noticeable juvenile criminality

It has been shown by figures from a large number of countries that there is, so to say, a 'criminal age', a period ranging between 16 and 30, when more than 50% of the total indictable offences are committed.

Parmelee quotes several tables to show the extent of juvenile criminality. He, however, enumerates a number of factors that render conclusions drawn from them more or less unsafe. Young children are frequently not prosecuted at all ; older ones may be dealt with in such a manner that their criminality is not recorded in criminal statistics. This probably exaggerates adult criminality in proportion to juvenile criminality. An offset is, however, provided by the fact that the young have not as much knowledge and experience as adults to aid them in avoiding detection.

Allowing for the above considrations and similar other statistical fallacies, one would find from the table of 'age distribution of offenders committed to prison in the United States in 1910' that criminality rose rapidly until the age period of 21 to 24 years, remained high until about 45 years of age, and then fell rapidly. In 1914, 42.61% of prisoners in the Penitentiary and Boonville Reformatory were between the ages of 17 and 24, inclusive; in 1924, 52.5%,—an increase of nearly 10%.

German statistics of convictions from 1886 to 1895 also stressed the fact that the highest criminality was reached just after adulthood was attained. In Prussia, convictions of criminals between 12 and 18 were as follows:

1882	30,719
1889	36,700
1893	46,078
1894	42,251
1898	47,975
1899	45,863

(Brasol)

It was interesting to note that among these approximately 66% were 16 to 18 years old!

According to the English statistics from a fourth to nearly one half of the convictions for several important kinds of crime were of persons under 21 years of age. There is a widespread belief that juvenile criminality has been increasing rapidly of late. The Metropolitan Police Commissioner's report for 1935 reveals the discouraging feature that, even allowing for the cruder methods employed by young offenders and the consequent greater ease in detection, the number of arrests for indictable crimes which relate to persons under twenty-one was enormous (about two-fifths of the whole) !

H. Joly demonstrated the growth for fifty years (1838—88) of both general and juvenile delinquency in France. The total increase was 133%. Juvenile criminality, for this period, showed an augmentation of 140% while the number of criminals between 16 and 21, increased 247%.

Somehow in India, juvenile criminality is far less manifest. Not that it is entirely absent. The reason for this needs consideration. It is just possible that a great number of crimes being committed here under pinch of hunger, it is the elders on whom the responsibility of feeding mouths rests under the joint-family system and who would look to supplementing income by crime when honest means fail.

Among crimes committed by juveniles stand out prominently petit larceny, grand larceny, burglary, and various other kinds of thieving, malicious mischief, etc. Forgery, fraud, etc., requiring more knowledge and cunning are seldom committed by these. As I have already said, sexual crimes also attain prominence among the adolescents.

The causes of juvenile criminality, so far as environment is concerned, will be found easily in those that account for criminality in general. We can only briefly touch upon a few here.

Poverty, for example, means that the child does not get enough nourishment being mostly under—and sometimes ill-fed. This may mean physical and mental weakness. Congestion at home means throwing out on the streets and allurements outside may easily be depraving. Working parents can afford little time to the upbringing of the young and there is, somewhat naturally, lack of restraint and guidance. Child labour, again, due to industrialization, constitutes a prolific source of crime. In some occupations labour stunts growth physically while mentally it exposes the young to immoral and criminal influences.

Professor Manouvrier, who has given much thought to the problem of juvenile criminality, observed :

> Thousands of children in Paris are exposed to the same danger notwithstanding the fact that they belong to quiet honest families ; this,—owing to the fact that their mothers are kept away from their homes ; at the same time the school ceases to be a shelter after school hours are over. On this latter point some progress has been achieved, but it is insufficient. There is lack of moral protection in such a city as Paris, where a multitude of adolescents find themselves in bad surroundings offering much more incentives for debauch and crime than to honest behaviour.

Parentage and home life of the juveniles have a great bearing on juvenile criminality and many of its causes can be found in them. Many of the parents are themselves ignorant and are therefore incapable of giving their offspring wise guidance and training during their early youth. A smaller number of parents are immoral and vicious. Where this is the case, the criminality of the juveniles in their charge is only a matter of course. Healthy control and wise guidance are little to be expected in such quarters ; rather self-indulgence will come to be fostered by example, if not by precept.

Many families are broken up entirely or in part by widowhood, desertion, divorce, etc., and many young boys and girls come to be adversely affected by such reverses and the consequential neglect. Illegitimacy and orphanage, again lead to careers of vagrancy, prostitution, and crime.

The education of the child is an important factor in shaping his future conduct and many are denied the privilege of having an education of the right type. Aschaffenburg thus expresses himself :

> As far as the development of altruistic modes of thought are concerned, I am inclined to attach still greater importance to the school than to the family. The school must not and cannot take the place of the home, but, within the close circle of family life, training and education are, after all, only possible to a limited extent, because encroachments on others' spheres of interest can be but slight in nature. Companionship with others of the same age in school, however, entails innumerable conflicts which arouse in the child the indistinct desire to have his interests protected against others, and also awaken in him an understanding of the necessity of adapting himself to others, to his surroundings, we might say, to the State on a small scale

The soundness of these observations can be hardly contested.

Still another factor in the causation of juvenile criminality is the effect of imprisonment itself. Justice Bosanquet, as we have said, sentenced the boy of nine to death for house-breaking and stealing two pennyworth. He might have even sentenced him to imprisonment with disastrous consequences. The effect of imprisonment on the juvenile criminal can be conveniently gauged from the observations of another Judge. This was Humphreys. J. who was dealing at Lewes Assizes with the case of George Lycett, age 33, who had pleaded guilty to a charge of house-breaking. It appeared that this man had been sentenced to 12 months' imprisonment with hard labour at the age of 15. "Thus", said the judge, "a criminal was manufactured". He further observed to the prisoner :

> The outstanding and painful fact in your case is that when you were a mere boy of 15 and committed an offence, in all human probability led on by others older than yourself, you were sent away to an ordinary prison full of really bad characters for what was called imprisonment with hard labour. In 1917 that meant hard labour though it does not now. With the greater knowledge that we have and the experience, no body would be surprised hat by that sentence you were made into a criminal, because that is the effect, it is now realized, of sending a boy to an ordinary prison where he associates with criminals. I am paying no attention to those convictions which you had and sentences you served for

some years because I think it must have been very, very hard for you to avoid committing offences.

Very few now will contest these observations.

We have so far considered the factors contributing to juvenile crime. I have by no means been exhaustive but have, perhaps, been sufficiently suggestive and have touched upon the more important factors and left comparatively minor ones to be deduced on the same lines. The question of treatment is not likely to present much difficulty provided we have diagnosed the case rightly and properly. In treatment which can be preventive and curative, the causes will have to be countered so as to prevent them operating at all, or mitigated so as to admit the possibility of a cure. We shall proceed to indicate the treatment both preventive and curative by serially recalling factors we have mentioned in connection with causation of juvenile crime.

The internal make-up of the juvenile criminal consists in his native disposition. We have seen that the human babe starts with a few instinctive reflexes and upon these unlearned reaction-patterns, are grafted an immense number of other behaviour-patterns, which make up his learned equipment. In this view of the matters, the child should be the focus of attention not only of the sentimental relatives but of thinking society in general.

The parents so far did whatever they could for the welfare of their child and the old idea of the child being born pure and sinless left society to think that no extraneous advice to parents was necessary in their management of him. Fortunately for humanity, society has now discovered that the parents, in spite of their best wishes and efforts, may not be best suited to make a man of him. Not that society should therefore take over entire control of the child to the supersession of the loving parents, but it should continue doing all in its power to study what child-rearing should actually mean, and to bring home to individual parents the gravity of the task and the enlightenment necessary to make the best of him.

The Rockefeller Foundation is spending millions of dollars every year on the care of the 'minds' of infants, children, adolescents and adults in the clinics, hospitals, schools and other institutions of America and elsewhere. The Mental Hygiene Associations are doing immense constructive work. Recent researches into the deeper layers of the mind have disclosed certain obscure mental processes which tend to confirm the old opinion that 'the child is the father of the man', and to show that the mental impressions of infancy form a large part of the mental life of the adult than had hitherto been recognized. In the apparently innocent and even well-meant practice, for example, of one's scaring one's child to silence or sleep by invoking before him images of ghosts and bogeys, may be traced the fear-complex of the grown-up timid man. Many careers are thus wrecked on the shoals of emotional instability thus imparted and much criminality is due to the agent's lack in early life of proper emotional steering.

A great part of the interest of Dr. Healy's extensive work, "The Individual Delinquent" is due to the application of mental analysis. The work is full of interest, of instruction, of inspiration and rightly commands authority as one by an investigator of enormous experience and remarkable success among juvenile delinquents. The influence of Freud is discernible, more or less markedly, in Healy's studies. In many cases of juvenile delinquency, the misconduct was traced by him to mental conflicts, usually dated from childhood, rarely or never later than early adolescence and it assumed all sorts of forms, and all degrees of gravity, from general troublesomeness to sadistic cruelty and injury by violence. The result of such analytic findings has been immensely fruitful for when the mechanism of inner conflict resulting in external misconduct is carefully explored and finally understood, and the subject appropriately treated, the outcome on so good a soil is, in at least some cases, immensely favourable. Thus curative treatment so far as the mental side of the juvenile criminal will consist in the turning over of such a subject to the psychological laboratory, or the equipped "Clearing House" for all criminals which we shall outline later.

The first stage, then, in preventing all criminality is to see that the human individual is well-born. It is not meant by this that the old aristocracy is to be re-established but that children born do not start with handicaps of hereditary infirmities. A child is born sinless but not necessarily sin-proof and certainly a good many children suffer from defects, physical and mental, of their forebears. Effective schemes of positive and negative eugenics can possibly rid society of many of these handicapped human babes.

The second stage would be to make adequate provision for the right type of education. This will start at home and be carried on in school and in the wider social environment. Men are born but citizens are made. A child takes to itself what is brought to it. It accepts example, usage, tradition and general ideas. As Mr. Wells says, 'moral values, bias and prejudice, hatreds and so forth were supposed to come 'by nature' and consequently the generation about has grown up in a clotted mass of outworn explanations, metaphors, mythologies, and misleading incentives and the misshapen minds reflected and condoned the social order'.

We do not wish here to enter into any discussion of what should be the ideal of present-day education but any educational system which is to render effective service in preventing criminality must provide : intelligent instruction in the ideals of citizenship ; an inculcation of the necessity for obedience to law in orderly society : sufficient manual or vocational education to enable every ablebodied citizen to earn a livelihood ; and efficient methods of aiding backward children who might otherwise fall easy victims to criminal suggestion.

Thus the really vital preventive treatment would lie in education in the large sense in which it includes care of the body and habit-formation in the first few years. By education desires can be changed so that they act spontaneously in a social fashion. To force a man to curb his desires as we do by the criminal law is not nearly so satisfactory as to cause him genuinely to feel the desires which promote socially harmonious conduct.

The important formative period is the period of childhood, during which there should be health, happiness, freedom and a gradual growth of self-discipline.

As for the environmental factors we have outlined, proverty remains a great blot on civilization. It is difficult to visualize a society so reconstructed as to afford equal material resources to each individual group or family. The problem, however, will have to be kept in the forefront and no other achievements of civilized mankind will make up for this, one remaining unsolved. In the meantime every thing that can be done towards mitigating the hard lot of the poor must be done.

The breaking up of families, etc., orphanhood and other misfortunes are unfortunately the normal vicissitudes of human life and only revolutionary principles of social reconstruction can so ensure that they do not affect individuals in any way adversely. Much can, however, be done to mitigate their otherwise disastrous consequences by the state and philanthropic humanity taking over, however partially, the task of caring for the future citizens, in addition to their friends and relatives.

For the treatment of those juvenile offenders that have fallen from grace on any or many of these accounts, society will have to pay equal attention, the principal aim being salvation of the wreckage. It is only lately that society has fully grasped the significance of treating juvenile crime before complications start. The child criminal of to-day is the adult of to-morrow.

How unsatisfactorily juvenile and child criminals were treated only in the last century would appear from the following description by Henry Mayhew in his Criminal Prisons of London. He says, "It was indeed a melancholy sight to look at that century and a half of mere children in their prison clothes. Some were so young that they seemed to need a nurse, rather than a goaler, to watch over them... We know of no sight in London so terribly pathetic—if not tragic—as this same oakum room at the boys' prison at Westmininster......True, the place is called a 'House of Correction'; but, rightly viewed, it is simply a criminal preparatory school, where students are qualified for matriculating at Millbank or Pentoville." (Wyndham).

Measures to avoid evils of imprisonment altogether in cases of all include :

1. The Conditional Conviction or Discharge.

2. The Probation which is an American contribution. It furnishes an illustration of the development of a non-punitive method of dealing with offenders.

3. Juvenile courts which most of the civilized countries now have specialized. The main characteristics of juvenile courts are : separate hearings for children's cases ; informal or chancery procedure ; regular probation service, both for investigation and supervisory case ; detention separate from adults ; special court records and probation records, both legal and social ; provision for mental and physical examinations, etc., etc.

4. In dealing with juvenile convicts especially, in view of the various considerations, the newly conceived need for reforming the convict and restoring him to society which must replace in our interest the older idea of punishment. The idea of reformative treatment has, however, taken time.

5. The Borstal School which has come to be a sort of modified public school where an earnest endeavour is made to construct a new character for the inmates.

6. The system of parole which has, of late, grown in popularity. A system of parole cannot operate by itself, but presupposes a prison or reformatory. The parole board is the agency which has the duty of determining when a prisoner should be released.

7. Sympathetic after-care for these released criminals, an essential to complete the success of the various methods of treatment. Crime being a social phenomenon, it is an imperative duty not only of the state but of each responsible member of the society to take active steps towards combating it. Punishment is only one method and even then its efficacy is being increasingly challenged. There are far more effective social measures and the great forces of science and of statesmanship in our civilization should be directed towards them.

I shall describe all these methods in Part III in the chapter on 'enlightened penal measures'.

As delineated in a latest treatise edited by the well-known Gluecks, the attention of thinking humanity has been rightly shifted to an emphasis toward stopping delinquency and criminality at the source rather than being largely preoccupied with the arrest, conviction, and punishment of those already criminal. The problem of juvenile crime is too vast and can hardly be left to the policeman or the jailor alone. The treatment should consist firstly, in co-ordinated constructive programmes at home, at school, and in society and by parents, teachers, friends and guides, not excluding the police,—and secondly, in reformative techniques aiming to discover and eliminate emotional conflicts and to adapt desires to more social ends.

CHAPTER VIII

FEMALE CRIMINALITY

Sec. 1. Sex and criminality—Sex-ratio and the disparity in the ratio of criminality—Causes.

So far, we have refrained from distinguishing the male from the female. Internal mechanism and external circumstances shape growth of the male as well as of the female and factors promoting criminality will affect the one as well as the other. The results, however, may and do vary, as we shall presently see.

Sex, in its manifold manifestations, is so intimately woven into the fabric of human life that anyone, whatever his attitude towards it,—favourable or antagonistic, has inevitably to admit its existence and potency. The emotions connected with this paramount instinct have probably played a greater part, both for good and for evil, in the history of mankind than have any other human passions. It is accountable at the same time for the highest of spiritual experiences, both in its own gratification and in the joys of parenthood, and for despair and neurosis, for all that is base in human nature through the passionate destructiveness of revenge and jealousy. In its baser aspect, it has from time to time burst the flood-gates of social control and will probably continue to.

To the layman, nothing could be simpler to understand than sex so that he will laughingly proceed to explain how there are two sexes—male and female. Such simple explanations as of Adam having been given a companion or of Manu making male and female at the same time or of God having cleft them apart in a moment of rage ever to struggle to come together—have occurred to, and been propagated by, mankind for countless ages. The biologist to-day finds, however, that natality, mortality, sexuality and reproduction are not the peculiar possessions of any one particular species, but are the attributes of living things in general. As he discovers how superficial structural differences as between the cock and the hen become fainter and fainter as he passes on to the drake and the duck, the gander and the goose and so backwards to the fish and simpler forms of life, or how even the role in the matter of reproduction changes, reverses, or even, is played by the same organism itself, as he passes from domesticated animals, to the newts and other minute organisms,—he is at a loss to define sex itself. The biologist thus can no more define sex than the physicist can define matter or the psychologist mind !

These references, again, are only suggestive. Nature has provided a variety of mechanism for, and of manner of, organic reproduction. At the human end of the chain is what we obviously find, viz., mankind divided into male and female with roles fitted to fulfil the biological function. We know even more. We know that in all probability all expressions of sex are nothing more or less than the results of the workings of a knowable, analyzable chemical mechanism. We know that the male can be transformed into female ; female into male ; the details of structure can likewise be destroyed or restored. We need not, however, pursue this topic further here. I have already studied it in another work on sex itself.

The sex-ratio is roughly an equality although causes have been discovered for the slight variations that may be commonly observed and experiment has shown that it is possible to influence the proportion of the two kinds produced. The feature that strikes a layman is the amazing disparity in the ratio of criminality of males and females although numerically they so nearly approximate.

World statistics will thus show that women are less criminal. Tables and charts have been quoted to show this in every country. I consider it useless to quote them as the feature is so universally represented in criminal statistics that the reader can refer to any and find it. In countries where female emancipation is more or less complete, there is from four to six times as much male as there is female criminality.

In countries where females are more or less segregated or work and live under disabilities and taboos, within physical boundaries or social limitations, the figures will differ even more disproportionately. In India the disparity is remarkable. As one says, 'the small ratio of female to male prisoners is one of the most remarkable and interesting aspects of the whole social system of the East, from whatever point of view one regard it'. This is an undoubted fact although it cannot be evaluated so easily. Nor can this be interpreted as in any way proclaiming the superiority of the lot of our womenfolk.

I have before me figures of prisoners admitted to jails in Bengal for a number of years. While male prisoners admitted and received on transfer neared a lac and on occasions as of the Civil Disobedience Movement in 1931-33, reached 1,50,000 roughly, female prisoners so admitted and received never exceeded 4,000 and those directly admitted in Bengal, 1,500, And this in Bengal with about 48 millions of people.

The reasons for such disparity, however, are not very difficult to find. So far as female criminality in general goes, we may say that women commit offences of which many go unobserved. Men are, again, more lenient in dealing with women criminals and courts are generally more reluctant to send women to prison than to imprison men. Finally, women have far less opportunities for committing crimes than men. The former do not play as important a part in business and professional or even in political fields.

Havelock Ellis, the formost sexologist, enumerates among other causes, the following :

1. Domestic seclusion.
2. Maternity.
3. Avocations of women fostering conservative rather than destructive ties.
4. Less drink.

5. Prostitution being a substitute for criminality.

6. Sexual seclection tending to diminish delinquency.

In India, the Purdah system obtaining among the Muhammadans limits activity as well as criminality on the part of their womenfolk. In Hindu society, the ideology of self-effacement and of obedience of womenfolk and the joyless drudgery of the widow, limit initiative and independent activity of the females. In both and perhaps in all cases in the human world, the economic dependence of the wife and other female relations on the husband or male members, precludes the female counterpart from worrying about immediate necessities. Strangely however, this is a unique feature and the rest of the animal kingdom in its entirety does not share the same burden. Perhaps this is part of the price paid in compensation to the woman for taking away her liberty. Other animals mate and reproduce, in many cases enjoy life-long companionship by pairing together but in no case has the one to feed the other though both look for food for the young in their helpless stages. Neither dominates the other as we do nor has such a heavy price to pay. Perhaps there is food for thought in this for those who would keep their womenfolk in convenient bondage as well as those who would grant them complete individual liberty but retain economic dependence all the same. The former undoubtedly curb the natural expression of human personality and the case of the latter again becomes almost tragic when the women claim not only their liberty but that they should be fed and pampered with what men term luxuries.

Sec. 2. Nature of female criminality—Differences between man and woman—Some periods of her life—Marriage—Prostitution—Alcoholism and other drug-habits.

Criminal statistics indicate that abortion, certain crimes against children such as abandonment, kidnapping, cruelty, etc., procuration and some forms of receiving stolen goods, etc., figure more prominently in female criminality. Poisoning as a means to commit a murder is more utilized by women than by men. False accusations are often made by women and only very occasionally do they commit such crimes as forgery, embezzlement, counterfeiting money, etc.

The nature of female criminality and the apparent lower criminality itself have to be studied with reference to the differences between the two sexes. It is not intended here to enter into a discussion of the question of superiority of the sexes. As a matter of fact, the question itself is meaningless. Comparison where conditions have been so unlike can only be invidious. Nature has made man and woman complementary to each other and it would be as useless to argue as to who is superior as to which is the better of the two blades in a pair of scisssors.

Undoubtedly, however, man and woman, in their existence through countless ages, have come to acquire differences which are significant. Some of these have a bearing on the topic we are discussing here.

Woman's inferiority in physical strength, for example, shuts her out almost entirely from many kinds of crime requiring great exertion, such as burglary, robbery, violent murder, etc. She figures rather prominently in murder by poisoning because violent means do not come her way.

Her rolê in sexual intercourse is relatively passive. She is on this account precluded from committing certain kinds of aggressive sexual offences, such as rape.

It is contended by some that woman's lower criminality is due to a moral superiority on her part. This innate morality has been contested by others on the ground that every individual has a bi-sexual parentage so that the distribution in the offspring, whatever the sex, would be more or less equal. It is, however, conceivable that on account of the permanent sex differences such as pregnancy, lactation, etc., the sympathetic nature of woman may in some respects be superior to that of man. Hans Gross in his

Criminal Psychology examines the various popular views with regard to woman and ruthlessly discards them. A simple statement which he quotes from Friedreich is that in general psychic character 'woman is more excitable and more volatile and more movable spiritually than man; the intellect dominates the latter when emotions, the former. Man thinks more but woman senses more'. Thus it has been said that women are wise when they act unconsciously but fools when they reflect. Havelock Ellis dwelt on the greater affectability of women and remarked that such affectability exposes women to very diabolical manifestations. According to him, this is also the very source of much of what is most angelic in women; their impulses of tenderness, their compassion, their moods of divine childhood. We thus see that the heaven and hell of women are but aspects of this physiological affectability.

Hans Gross has further remarked that 'woman is different not only in appearance but in manner of observation, judgment, desire and efficacy'.

Failure to appreciate such and similar other differences has subjected her to age-long condemnation at the hands of men. The sages of antiquity have both praised and condemned her. Apart from her traditional role of having been the veritable cause of man's fall from grace, much has been said of her by way of generalizations, often one-sided and sometimes frivolous. Homer attributes scandalmongering and lying, Manu helplessness, the Chinese soullessness, the Koran a subordinate role, Schopenhauer hypocrisy and Aschaffenburg insincerity. None need take these very seriously. Beyond certain agreed points of difference, woman can be said generally to differ from man as much as can one man from another.

We can anyhow say that both on account of her innate traits and her social position, her antisocial tendencies are more likely to take an immoral form which is not criminal, even though it may do as much harm as many kinds of crime. There seem to be reasons for us to believe that women excel men in deceitfulness, lying, hypocrisy, malicious gossip, back-biting, slander, nagging, etc. These are perpetual causes of friction in society, and give rise to an immense amount of unhappiness.

The impulse in man to seek variety leads to adultery and disloyal conduct. A loving woman does not so much blame her disloyal husband but usually turns all her hatred on her rival. Sometimes, however, she does turn on her husband and in such cases, as well as when a paramour humours her fancies and induces her, she becomes revengeful or disloyal and takes recourse to poisoning or some such foul crime.

Of disturbing causes in her life, menstruation is one, the period being marked by changed feelings. Even honourable women may lie and steal, assault and even commit arson during their menstrual aberration.

Pregnancy is clearly another. This brings on an anxious period during which a woman may worry herself into strange moods.

Unsatisfied desire (want of orgasm) in marital life is the cause of physical, which may lead to mental, disturbances. Such a thing is scarcely possible in the case of the male partner.

Social rigour generally, and especially in India, takes stricter notice of sexual offences by women. Infanticide by women is in most cases due to their efforts to hide shame. In cities where facilities are available, abortion takes place. In India economic conditions and the expense involved in the giving in marriage of daughters sometimes lead to it. Superstition sometimes, though rarely, accounts for it also.

The state of marriage is said to influence criminality. In the case of man, marriage means increased responsibility—supporting a wife and children. Necessity may thus impel many to crime. Family life, on the other hand, has a stabilizing effect upon men and thus may restrain them from crime. Married women, however, are seen to present a striking contrast to married men, for their criminality surpasses that of unmarried women throughout their lives. Aschaffenburg asserts that this is due to the fact that the poorer classes are crowded together in tenements, etc., thus giving rise to much friction among women most of whom are married. Bonger views that the high criminality of married women is due to the fact that a greater proportion of the total number of unmarried women is in the middle and upper classes than in the poorer classes. India records so low a criminality on the part of women generally that it is impossible to draw any reasonable conclusion as to any such disparity.

Prostitution is a problem by itself and I have studied it elsewhere. It is commonly understood as implying the temporary sale of one's body for the sexual use of another. The institution is agelong and is to be found in every country in the world. In India it had at one time attained a so-called religious sanctity. S. M. Edwardes in his book, Crime in India, has dwelt at length on the topic of prostitution in India, showing the magnitude of the problem. The problem is, however, universal and the White Slave Traffic in the west was and still is food for thought for many.

Prostitution has been regarded as a substitute for crime by some and Lombroso went so far as to classify prostitutes with the criminals and to study them as such. The adoption of a career of prostitution is a sequel of many causes, among which abduction, dissatisfaction at marital condition, marital disharmony, voluptuousness and poverty figure prominently. A good many enter upon such a career because it is the easiest way for them to secure the clothes and jewelry which their vanity demands. A man who wishes to attain similar ends has to look to crime.

In spite of the severe social condemnation of prostitution, it can hardly be considered as a crime. It is conducted on a voluntary basis and it does not give rise usually to conflict between individual interests. Many are forced by bare economic necessity to embark on a career of shame despite their reluctance, because there is not enough scope for women in industry and the professions.

On the other hand, however, prostitutes become somewhat brazen and hardened to public opinion. When the greatest barrier of scruple breaks down, it is only natural that other healthy scruples should be more easily overcome. As such, prostitutes do figure very prominently among female criminals. According to Guerry, 80% of female criminals under 30 were recruited from prostitutes in a certain year.

I have already shown how low is recorded female criminality in India. Prostitutes, however, figure unusually prominently in whatever figures we have. In 1921, out of 377 female convicts directly admitted to Bengal jails, as many as 197 were prostitutes, in 1922 out of 511, 145, and in 1923 out of 440, 96. Other years also show such high proportions.

Indirectly, again, prostitution becomes a criminigenous factor in a variety of ways. Many a rich lad is ruined to such an extent that he may resort to crime for raising money. Prostitutes become rivals to real wives and cause disruptions in families. These may eventually lead to crimes of cruelty or violence. In this country, again, prostitutes' houses are frequented by bad characters and as such they serve as meeting places of criminals. They thus prove to be media of criminal initiation and instruction also to other visitors.

Alcoholism and other drug habits are due to bad environmental forces. In the west, they have proved an immense problem. In various countries, laws have been enacted to limit sale of liquor and otherwise mitigate its evil effects. In America, Father Mathews is said to have diminished one third of the crimes in the country by combating Alcoholism among the poor. This may or may not have been an exaggeration but the fact remains that Alcoholism *is* one of the worst criminigenous factors. Among evils of prostitution Dr. Forel dwelt upon two, viz., the spread of Alcoholism and that of the venereal diseases.

The problem of Alcoholism and intemperance is not so very acute in India. To the vast number of Mussalmans, Islam has categorically refused the license of intemperance. The Hindus also abhor wine and other intoxicating liquors in general. The Indian public is alive to the danger of intemperance growing under sway of example or of foreign impact or even through contagious imitation and a programme of prohibition has already been started. It is needless to say that this is a step eminently in the right direction.

CHAPTER IX

THE HABITUAL CRIMINAL

Nature of the habitual criminal—Recidivism—Magnitude of the problem—preventive detention and indeterminate sentence—Criminal tribes.

The "habitual criminal" constitutes a separate problem. While discussing types of criminals in a preceding chapter, I noticed how the term itself is in many ways unhappy. It has, however, come to stay and has already gained enough currency.

In his classification of criminals, Lombroso counts the habitual criminal as one of the subclasses of the occasional criminal. The habitual criminal is thus a normal person who is led by the circumstances of his early life into a career of crime.

Ferri, however, recognizes the habitual criminal as a distinct type. According to him this type has little or none of the peculiar traits of the born criminal. The first crimes committed by this class are caused less by congenial tendencies than by the force of bad circumstances and of corrupt surroundings. Once a crime has been committed, impunity encourages a second attempt and thus repeated, criminal conduct becomes a veritable habit.

Parmelee would have the habitual criminal included under professional criminals. He contends that it is psychologically wrong to designate criminals as habitual. I have mentioned such contentions already while discussing types of criminals in a previous chapter.

I should think Parmelee has not solved the difficulty in recognizing the habitual criminal by merely merging him in the professional criminal. The specific characteristic of the former should appear to be *repetition* whereas that of the latter *lucre* so that he supports himself entirely or in part by means of his criminal conduct. In case of the latter, crimes committed may be few and far between as his coups will be designed to yields of profit whereas in that of the former they are usually many and in some cases *lucre* may be no consideration at all. A man may be mischievous or lascivious and go on committing crimes with no particular material gain in view. Thus in the habitual criminal, the conservative forces of habit predominate ; the professional criminal, who is usually intelligent, is guided by rational motives and voluntarily incurs the risks of his mode of life. A criminal may be both at the same time or one without the other.

Without being too hair-splitting, we can visualize the habitual criminal with whom crime, instead of being an occasional hobby, or the result of unemployment, is a full-time job, who has come to make wrongdoing his chief occupation. Recidivism, to adopt the term of French origin which expresses the persistent, reiterated lapse of the same individual into wrongdoing, is a strikingly gloomy feature of crime,—one that has attracted more and more notice as our method of study has become more and more scrutinizing. A great bulk of modern crime is being persistently repeated by the same persons. Speaking of England, the Encyclopædia Britannica comments that rather half or more of the whole number of serious crimes is the work of the habituals. In the official year ending 31st. March, 1899, there were in all 113, 182 males and 45,228 females committed to prisons. Rather more than half the males and nearly two-thirds of the females had been previously convicted, not only once, but twice, thrice upto twenty times or more! As many as 19,313 males and 6,062 females were with one previous conviction, 3,891 and 2,013 with four such convictions, 8,558 and 5,269 with six to ten, 6,079 and 5,393 with eleven to twenty and 4,182 and 6,639 with more than twenty.

Commenting on these figures, the writer in the Encyclopædia remarks that we have thus a grand army constantly on the march through prison, subject to all our methods but yet going undeterred. Nothing avails, neither the cruel restraints nor soft pursuasion. The state retaliates as best as it can but they refuse to reform. Call them what you will,—born criminals as Lombroso—product of an imperfect social system, criminals by predestination—uncontrollable tendency, mere accident or neglect—criminals, a large proportion will continue their careers. Incorrigible while in custody, intractable at least to any methods hitherto applied.

These observations are borne out by figures from nearly everywhere. American figures in 1910 would show as vast a number as 34,979, committed two or more times to the same institution. Of these 25,182 were committed twice, 5,960 three times. 2,085 four, 892 five, 397 six, 216 seven, 97 eight, 57 nine, 93 ten times and more. Sutherland mentions the fact that of the offenders committed to jails, prisons, and reformatories in 1933, 48 per cent. had been committed previously to such institutions. Even this, he suggests, is far from a complete enumeration of the recidivists, for the methods of identification were still restricted largely to the institutions for adult felons.

The head of Scotland Yard in London wrote not long ago that ninetenths of the serious crimes of that city were committed by repeaters, and if they could be eliminated, serious crimes would be reduced two-thirds.

Aschaffenburg commented on figures in Germany in the year 1903 in these words :

> Here too, we see that, from year to year, those who have already served sentences are most strongly represented among the convictions. The number of those convicted three times and more has doubled and trebled. ...Whoever has once got deep into the mire of criminal life is scarcely able to get on firm ground again. It is quite certain, however, that our penalties are ineffectual, in so far as they are intended to deter from relapse. The oftener efficacy of punishment has been tried on an individual, the less can we hope for success from this means.

It is needless to add that recidivism will feature in Indian criminal statistics nearly as prominently. In Bengal, for example, in the year 1921, habituals reconvicted numbered 6,319 or 22.39 of the total number of convicts admitted. In 1922, they were 5,626 or 19.63%, 1923, 5,387 or 22.84%, 1924, 4,926 or 20.64%. It must be remembered that in those years, the Non-co-operation Movement sent in large numbers of prisoners.

Although the feature is distressing as far as the efficacy of our penal methods is concerned, there is nothing intrinsically unusual in the phenomenon itself. The force of habit is dominating the whole organic world. Apart from instinctive habits which take the form of reflex movements, acquired ones are results of combined bodily and mental activity. Every new repetition costs less energy both in the realm of the body and the mind. The first crime is committed under protest of the conscience, the second under less and so on until action becomes almost automatic and repetition a pleasure. Then there is the urgent. A poor man resorting again and again to crime may do so under grim necessity and with no pleasure. If the circumstances recur, is it any wonder that the man will do the same thing over again ? Is not force of habit noticeable in almost every other form of human conduct ?

In this explanation lies the only intelligible clue to the mind and action of the habitual criminal. It is not necessary that a man be apprehended to be a habitual criminal. Many are not caught. The dishonest public servant or the corrupt politician will no more forego his easy money at every new opportunity offering itself than the thief will let pass a movable booty.

Thus to the scientist scanning human behaviour, the recidivist is not much of an enigma. He is, however, a problem to the penologist. What an indictment of our methods of treating the criminal is pronounced by the spectacle of the same persons appearing again and again in jails, reformatories and workhouses. What a challenge to those who would cure these by the sole means of added torture or increased hardship.

"The most striking thing in the whole situation," says Dr. V. V. Anderson, "is the depressing fact that the majority of the inmates in our penal and correctional institutions are repeated offenders, persons who have been prisoners over and over again, in whom we have failed to accomplish that which we have set out to accomplish—their reformation, and the prevention of future criminal conduct. It is a striking commentary on our methods of dealing with criminals, to learn that from 40 to 50 per cent. of the criminals responsible for the recent crime wave in this country are individuals with old prison records."

For instances of habitual criminals the reader is referred to the introductory chapter where the repeated criminality of two bad characters has been detailed. I could quote hundreds of such cases. Every Thana (Police Station) has on its records scores of bad characters who come out of jail only to return to it. Do whatever you like to them, send them up to the Sessions for enhanced sentences of years at a time, there they are only to be shunted out and in.

The Criminal Tribes or Classes of India of whom we shall say more in the next chapter constitute a grave social problem. These communities known as Criminal Tribes have for their chief occupation crime of one kind or another—burglary, robbery, etc., etc. They are definitely committed to crime. They are both professional and habitual criminals.

Of methods suggested and tried to deal with the habitual criminals we shall read later. 'Preventive detention' and the 'indeterminate sentence' are among them. Above all, however, is individual diagnosis and individual treatment, of which we have spoken and on which consensus of progressive opinion converges. The reader is referred to Part III in which penal measures and other methods of treatment will be studied in detail.

We cannot close this chapter without referring in brief to the practical bearing of these studies of the habitual criminal. In Police circles the force of criminalistic habit is well recognized, because of its useful yields in the matter of tracing of the criminal. The well-known return of the offender to the old scene, to the old type of misdeed, to renewal of life with former companions; the engaging in prior occupations, the succumbing to temptations which previously own the day, ...all these are important factors and are duly weighed in the system of investigation by *modus operandi.* We shall detail the system in due course.

CHAPTER X

CRIMINAL CLASSES AND COMMON SWINDLERS OF INDIA

Nature of the criminal classes—Distribution—Inter-provincial criminals—Those operating in Bengal.

It must be realized that we are speaking of criminal classes here in a limited sense. We have seen how criminals have been divided and subdivided into classes, the criminals being considered in a wide sense and the classification attempted on a scientific basis. The criminal classes we are now speaking of constitute only a group to be covered partly by the class habitual and partly the class or sub-class of professional criminals. Thus we speak of classes here in a loose sense or rather as in common parlance.

So far as the nature of these criminals is concerned, we have seen how from their repetition of the same form of crime, the specialization in skill, the almost inevitable drift of every member of the class to crime, the difficulty with which they can be controlled and the apparent hopelessness of any attempt to reform them, one would easily be inclined to hold that these persons were born criminals and were destined to live and die as such.

This, however, is not the case. Although these classes have a historic background and do universally commit crime, they are only professionally criminal and the sway of precept and example incline them to crime.

It must be realized that members of these classes are not born criminals any more than are members of castes and subcastes like cobblers or barbers. They are habitually addicted to crime because of the vicious environment in which they are born and brought up. There is little likelihood of a child at birth separated from the surroundings and reared up in a normally good family evincing interest in crime later in life.

Although, then, criminality of these classes is even more marked than that of recidivists we have already studied, the main cause is early initiation in crime and adoption of ready careers at hand.

In Italy a criminal tribe going by the name of Camorra has been in existence since 1568. In Sicily the Mafia has been a veritable scourge.

Classes and tribes addicted to systematic commission of crimes are to be found in every province of India. The problem presented by them is enormous and often renders special measures of control necessary.

It is difficult to estimate the number of these Criminal Tribes. In the Punjab there are 21,000 registered male adults. Including their families, who are invariably their associates in crime, these number at least 63,000. But this does not by any means represent their complete number, as many remain unregistered.

In the Bombay Presidency these predatory tribes are very numerous. Mr. Kennedy in his book on criminal classes in the Bombay Presidency, shows that the tribes to which they belong and from which they are recruited, number no less than 2,700,000, besides thousands of what he calls "Foreign tribes" who visit the Bombay Presidency. United Provinces, Madras, the Indian states also are infested with these.

Criminal classes in the Bombay Presidency have been described in detail by Mr. M. Kennedy, late Deputy Inspector-General of Police, Railway and Criminal Investigation, Bombay. His notes published in 1908 furnish valuable informations. We shall refer to some of the tribes presently.

The criminal tribes of Madras are delineated by M. P. R. Naidu and those of the United

Provinces by S. T. Hollins. Gayer describes 'some criminal tribes in India', mostly those of Nagpur and the Central Provinces. Some account of those in the Punjab can be read in a published report by H. K. Kaul and L. L. Tomkins.

F. C. Daly in his 'Manual of Criminal Classes operating in Bengal' describes those who carry on depredations in the Bengal Presidency. An unfortunate feature so far as Bengal is concerned has been that criminal classes from almost all over India have found a profitable field of operation here. This has thrown a considerable additional burden on the police administration of Bengal. An enquiry into inter-provincial crime was undertaken by P. B. Bramley and the outcome was the report published by him in 1904. The report dealt mainly with the question in so far as it related to the commission of crime in Bengal and Assam by criminals from the United Provinces.

The chief factors which had contributed to such crime were the extension of the railway system, an increased demand for skilled and manual labour in the mills and factories, in the main trading centres and in the agricultural districts of Bengal and the lack of satisfactory police arrangements. The influx of hands was enormous. The criminals found that they could follow their nefarious calling with more profit and less risk in Bengal and naturally took full advantage of the situation. It is easy to see that the same inducement offered itself to criminal and quasi-criminal tribes of other parts of India and they responded to it only too readily.

A special feature in this, however, was that while there was no dearth of criminal classes from other places to migrate into Bengal, similar incursions from Bengal outward were not discovered. There were obviously greater attractions here than elsewhere and perhaps less danger, the former provided by the comparative wealth of the inhabitants and the latter by the manner of their living in detached and isolated houses of mat and thatch, the rottenness of their huts and sheds, the timid character of the people, the proximity of rivers which afford an easy means of attack and retreat, etc., etc.

Bramley in his report just quoted stressed the ignorance displayed by officers in Bengal of the nature of these outside criminals and recommended introduction of a special course of instruction in Provincial Ethnology at the Training Schools. Knowledge of the criminal classes is now insisted on and information in detail is now gleaned from books available. In a general treatise of the nature of this book there can hardly be much space devoted to the topic. The necessity for public enlightenment, however, calls upon me to make a mention, however brief, of the nature and extent of dangerousness of the various criminal classes in India. Since, as we have seen, Bengal is the field of operation of almost all the principal classes of criminals of India, we shall only mention those we meet with in Bengal. (Vide Appendix A).

They constitute, as I have said, a social problem. Towards uplift of these unfortunate beings, the Administration has been labouring long. They are being concentrated in settlements, managed either by Government or some such organization as the Salvation Army. Firm supervision is combined with an effort to assist them in gaining a decent livelihood. Particular care is taken to see that the younger generation is not spoiled by vicious example or precept. Trades are taught and incentives are given to bring up the boys as self-supporting and self-respecting members.

Undoubtedly this is a step in the right direction and the public should take interest in this reclamation of a part of humanity.

The nearest settlement is at Saidpur in the district of Rangpur, North Bengal, where Karwal Nuts are being looked after.

Deserved tribute was paid only the other day by witnesses before the Criminal Tribes Inquiry Committee appointed by the Governor of Bombay to the splendid work done both by the Government and by unofficial agencies for the welfare and reformation of the unfortunate people. It was the purpose of the inquiry to review the working the Act, consider how far it has achieved reformation, give impartial consideration to evidence from all quarters as to conditions in the settlements, and propose changes in policy and administration as experience may have proved expedient. Criticisms offered from the side of the Congress Committee urged that the Act has been more punitive than reformative, that power has often been abused, that workers in the settlements did not get a living wage and that members of settlements hardly ever came out as free and ordinary citizens. While there may be room for improvement, as there is everywhere in every direction, the enormity of the task undertaken is often not realized.

If only to facilitate public enlightenment, I summarize here the nature of good work done in this field. The very nature of the criminal classes, namely, that of preying upon society, necessitated the subjection of members of notified tribes to various types of restriction according to their individual criminal records. Some are merely required to attend roll call in their places and keep the police informed of their movements; others are restricted in movements beyond certain limits; only the most criminal are placed in settlements where every attempt is made towards their reformation. These settlements are not now places of perpetual and uninteresting peace, but discipline, regular habits of work and the spread of education among the younger generation have achieved for them immense benefit. An increasing number of home crafts are taught, while large numbers of settlers are finding employment in factories, mills, workshops and in agriculture. One should not expect miracle in a chronic case like this but should only expect that more extensive work on the lines already undertaken be done.

Government has been amply assisted by many voluntary agencies including Christian missions, the Servants of India Society, the Social Service League and the Salvation Army. There is evidently room for more voluntary aid to be forthcoming in this very useful social service.

PART II

CRIME

CHAPTER XI

THE NATURE OF CRIME

Sec. I. Early notions of crime—History—Analogues—The earliest crimes—The classical theory—The theory of 'Natural Crime'—Public and private crimes—Sin, vice, tort and crime—Popular idea of crime.

Crime, as we have said, is as old as human society, and, unless our nature alters very much, it will last as long.

The equivalents or analogues of crime are to be found among animals other than man. Lombroso attempted to trace them in the plant world as well.

The mammals and birds share many of the instincts and feelings of man. Devices adopted by them for survival, again, are innumerable. Some owe safety to speed and agility in pursuit, or in escaping from pursuit, some to strength and formidable weapons of offence, some to prickly weapons of defence and some to impenetrable armour which renders them invulnerable. Many others survive in other ways. Social life itself is an aid to survival though not consciously adopted.

Society has a life of its own. The fundamental social instinct has helped companionship. Every aggregate demands limitation of the intrinsic independent motion of the constituent elements of the aggregate. Human society is the product of the social instincts and feelings partly guided by intellect; in similar fashion a social manner of life among many of these animal species has developed under corresponding instincts and feelings in them. In each of these animal societies habits and customs arise which in the long run aid the survival of the species. Consequently the members react against acts repugnant to these customs. When such acts are committed, members of the species have in many cases been observed to display anger which has led them to inflict pain upon the offending individual.

The analogy, however, should not be carried too far. There are writers who would quote instances of birds or other animals holding courts of justice and laying penalties but they are obviously interpreting in altogether too anthropomorphic a fashion the assemblies of gregarious species at some of which offenders may be punished incidentally. There are vast differences between man and the animal world and these must place limitations upon the analogy.

Curiously, however, animals have at one time been held morally responsible for their acts. When an animal did an injury to human beings, it was punished in much the same way as if it were a human being. Many such cases can be read in "The Criminal Prosecution and Capital Punishment of Animals" by E. P. Evans.

The beginnings of crime among men took place in the dim prehistoric past. Much though anthropologists have tried to trace them, one cannot prevent history tailing back into pure mytholgy. I do not mean the popular mythology of old Adam and the few generations of his children. We have to go back to the order of primates and the class of mammals to which the first men belonged. First men, then, shared the characteristic traits of the mammalian world.

Possessing the mammalian traits, these men experienced anger, sympathy, sexual passion, parental love and all the other instinctive impulses and feelings which determine human conduct. Their social tendencies led them to form social groups. As individuals they formed habits, as social groups they evolved customs.

With speech developed, public opinion grew and moral ideas evolved. Magical and religious ideas as we have studied in section 4 of Chapter V, were soon to follow. I can only refer the reader back to those discussions for a better understanding of how the earliest crimes were arrived at.

The catalogue of "crimes first punished by the community" has been given by one writer as follows :

1. Witchcraft.
2. Incest.
3. Treason.
4. Sacrilege.
5. Miscellaneous offences, those against sexual morality, and those of poisoning, breaches of hunting rules, etc.

Another writer has rearranged the catalogue in a different way.

Back of these primitive notions of crime, both public and private can be discerned primitive ideas concerning collective security and well-being. These crimes were presumably held as menacing the integrity and survival of the group.

We have studied the views of the classical school on the criminal in Chapter II. The classical theory is that crime originated in torts.

According to this school all wrongs were at first treated as injuries to individuals and later came to be regarded as wrongs against the state.

Certain writers, chiefly Garofalo, have tried to arrive at a catalogue of crimes which have been at all times and places branded as antisocial acts. Garofalo developed such a concept by naming such acts as 'natural crimes' and defined them as violations of prevalent sentiments of pity and probity. As may be expected from the shifting nature of 'prevalent sentiments', such a catalogue grows thinner and thinner and almost vanishes finally. In other words, there are very few or possibly no acts which have been at all times considered as crimes. We shall see this presently when we consider how the concept of crime has changed from period to period.

Dr. Mercier would differentiate between what he would call public crimes and private crimes. Every crime, according to him, is an act or omission by which the criminal seeks his own gratification at the expense of some injury to the society to which he belongs. Public crimes are those which are offences against the state or community. Private crimes are those acts or omissions that are injurious to society as a whole, not by attacking the primary or secondary functions of the state, but by injuring its individual members and so impairing its fabric by a process of attrition.

Before we come to study crime in precise outlines, we might indicate the way in which it differs from sin, vice, and tort. They are all closely related to one another and public opinion has constantly confused one with another.

Abnormal conduct is seen in two general forms—one more individualistic than social, the other more social than individualistic. Sin or vice comes under the former, tort or crime under the latter.

To take up *sin* first, we may indicate that in a normal individual, personal conduct is determined by regulations reaching much further than those imposed by any legal process. As a matter of fact, an average individual is seldom conscious of legal restraints. Of moral restraints, however, he can rarely remain unconscious for any considerable length of time. The sources of moral restraints are many,—divine legislation, force of usage, etc., etc. In most societies divine will was and is considered obedience-compelling. It is supposed to form the very basis of all civil laws, or, at any rate, to supplement them. Extending to the most minute detail of conduct is moral law which makes itself felt through what is commonly spoken of as *conscience.* Violation of a moral law is sin. For adherents of the various religions, it is so very easy to conceive what sin is.

We have studied how primitive religions grew. In many ways religions have been just as coercive as law, or even more so, inasmuch as its prohibitions are backed with threats that take the form of immediate curses and future damnation. Not doubting how God would mete out terrible retribution in the life to come, primitive society set out, in order to avoid universal pollution, to promptly rid itself of the offending member by a sort of surgical operation. Even where it did not proceed so far, it took steps hard enough to appease the angered deity. Thus, humanly as well as divinely regarded, a sin was or is even more deadly than a crime. This sacrosanct character which attaches to tribal usage or religious taboos, entailing a ceremonial punctiliousness that extends to the last detail, affords the true explanation of that conservatism which the modernist who comes into contact with the savage or the religious communities finds so unreasonable. There can be no arguing about the utility of a taboo, namely, an avoidance resting on a religious sanction. The method of attack cannot therefore usefully be direct ; it is by convincingly explaining the real nature of such sanction that the joyless drudgeries and meaningless details can be shorn of much of the glamour that uncritical humanity has come to associate in them, This is a task to which I may some day address myself.

If a sin does not injure society, there is no element of crime in it, if it does, there is, or in other words, when sin is individualistic, it is no crime. When I violate a religious formality which does not affect anybody else, I commit no crime. If it does, law will most probably have made it a crime by recognizing its social injuriousness and attaching a penalty to it. Many crimes were sins in earlier societies and many sins and crimes overlap even now. Theft is a crime and is regarded by many as a sin also ; so also are rape, murder, etc., etc. When sins stand apart, there may be no earthly punishment meted out or there may. Social displeasure and ostracism or similar social reactions may be as cruel and relentless as any legal form of punishment.

Vice is a social manifestation of sin. A form of conduct is vicious when it is flagrantly and openly contrary to moral regulations and is social rather than solitary. Sex-immorality is vicious. The difference between sin and vice is mostly one of degree.

A *tort* is essentially a private injury as distinguished from a public wrong. It gives rise to civil suits for damages. In ancient times, the injured man might have sought private vengeance ending in bloodfeud. Arbitration and pecuniary compensation then slowly crept in. A tort is partly individual and partly social in nature. It borders very closely on crime. Certain actions may be both torts and crimes.

A *crime* is popularly made to include more and sometimes less than the actual connotation. Breaches of moral principles never concerned with law are loosely described as criminal; minor offences, on the other hand, are not so called although the state punishes the offenders.

The conventional view has been that a crime is an offence against the state, while in contrast, a tort in violation of civil law is an offence against an individual. In practice, however, the general public is actively interested in a very small proportion of crimes and the victim in many cases is interested primarily in securing restitution.

Crime may, for practical purposes, be regarded simply as conduct (either in commission or omission) of which the state disapproves, and for which it demands a penalty. We shall discuss it in more details in the next section.

Sec. 2. The concept of crime not static—Notions of crime not uniform—Examples—Difficulties in defining crime—Some definitions—The characteristic features of crime—Crimes created by religious, despotic and class-legislation—Causes of crime—Legal elements of crime—Ignorance of law.

The concept of crime has not been static nor will it ever be. It has gone on changing and will ever do so. This is only in keeping with the changing nature of all human concepts. As we have seen, the concept of crime has at times overlapped that of sin, vice or tort. It has ever remained relative from the legal, and also from the social point of view. This should be thoroughly grasped and ever borne in mind. Crime and not—crime are not two distinct types of behaviour but constitute a continuum. The criminal and noncriminal population likewise, as we have seen, cannot be strictly segregated from each other.

A particular act may have been a most serious crime at one period, a trivial one at another and no crime at all at yet another. Almost every decade new crimes are being added to the old list and many of these may not have been even mentioned as ever likely to become crimes.

In very primitive tribes, murder, robbery and rape were not considered as crimes, not at least in the modern sense. For one tribe to attack another by surprise, to slaughter its men, to appropriate its land and cattle, to ravish or enslave its women, was considered as rather meritorious conduct. Many of the early crimes were primarily religious offences and until comparatively recent times these remained important.

According to Oppenheimer, witchcraft is probably the first in point of time, and certainly the most universal, of all primitive crimes. Unfortunately for humanity, it persisted as a hideous crime till only the other day. Tens of thousands of persons suffered agonizing tortures and an execrated death, darkened by an assurance of everlasting damnation for this offence of which they were not only innocent but of which, as we now realize, it is impossible that any one should ever be guilty ! The records of even one, namely, the sixteenth century are ghastly in their revelation of the triumph of this among other sanguinary superstitions.

Of curious crimes we read incredulously of any number in the ancient and the medieval codes. To quote a few collected by Sutherland :

It was a crime in Iceland in the Viking age for a person to write verses about another, even if the sentiment was complimentary, if the verses exceeded four strophes in length. A Prussian law of 1784 prohibited nurses and mothers from taking children under two years of age into their beds. The English villain in the fourteenth century was not allowed to send his son to school and no one lower than a freeholder was permitted by law to keep a dog. The following have at different times been crimes: printing a book, professing the medical doctrine of circulation of the blood, driving with reins, sale of coin to foreigners, having gold in the house, buying goods on their way to market or in the market for the purpose of selling them at higher price, writing a cheque for less than 1.00. On the other hand, many of our present laws were not known to earlier generations—quarantine laws, traffic laws, sanitation laws, factory laws.

As we have observed in connection with the definition of the criminal, it is so very difficult to define anything precisely. Writers have attempted to define crime in various ways and many have erred on this side or that. The legal and sociological concepts of crime are, again, in many ways different.

From the sociological point of view, Radcliffe-Browm has defined crime as 'a violation of usage which gives rise to the exercise of the penal sanction.' Thomas has defined it as 'an action which is antagonistic to the solidarity of the group which the individual considers as his own.' Parsons has said that sociologically crime is the infraction or violation of established or codified custom or public opinion at a given time. In this sense it is always a shifting thing, a part of which stretches ahead of legal enactments; while legal crimes always embrace certain forms of conduct from which the odium of social disapproval has fallen away.

These are rather descriptive and suggestive without being strictly precise. We may now take up some legal definitions.

The simplest definition from the legal point of view is that crime is a violation of law. Technically, the enactment forbidding an act causes the act forbidden to become a crime at that moment. As a corollary, no act is a crime which is not legally forbidden. Stephen, following Austin, defines crime as an act or omission that the law punishes. English law often, in practice, distinguishes between crime and a mere offence such as a bicyclist not having a light. The word crime is thus used as a stronger term of condemnation.

The State Codes in America usually define :

Crime is an act or omission forbidden by law and punishable upon conviction by : Death ; or Imprisonment; or Fine; or Removal from office; or Disqualification to hold any office of trust, honour or profit under the State; or other penal discipline.

We hardly need adding more of these definitions as all will more or less give the same idea in different words. Let us take the various implications.

An individual may be acting in a certain manner to-day and be considered a perfectly normal person. To-morrow the act is forbidden by law and in some subtle and mysterious way, he has become a criminal! What has occurred within him overnight? To escape from this, we may place criminality in the act instead of the doer but this again is pure fiction! What has happened to the act overnight to deserve the odium? In order to escape from this, again, we labour towards taking cognizance of various technicalities, such as, intent, design, malice and knowledge of law. The confusion, however, persists.

As a practical rapprochement between the legal and sociological concepts, we may view that when any one form of conduct (sin, vice or tort) has attracted attention of the social group and been considered dangerous to social wellbeing, it is forbidden by law and a penalty attaches. 'A crime, then, is that action or lack of action which in some way violates not only the moral code or the individual rights but in addition to them or independent of them violates the code which safeguards the interests of the whole social group.' It is antagonistic to social order. Sin, vice or tort, *may be* unsocial but crime *is* distinctly antisocial.

The most obvious feature of crime, then, is that it is created by the law and is penalized by the law. Most of the criminal acts are sins of commission; some, again, are sins of omission. Crimes in the latter respect, consist of failures to perform acts required by the law.

No body of laws could endure for ever, despite the claims of prophets who would have one set promulgated in the name of God with suggestions of universal or eternal validity. It is this elastic feature, then, that justifies progressive thinking and periodical re-examination.

It is generally true that criminal acts have also been immoral acts. This has only a few exceptions. Many immoral acts, again, are not criminal. Generally speaking, the more serious of the antisocial acts are crimes.

Crime, thus, may be considered as involving three elements: a value which is appreciated by a group or the politically predominant part of it; isolation of another part of this group so that its members do not appreciate the value or do only feebly and consequently they tend to endanger it; and a pugnacious resort to coercion by those who appreciate the value to those who disregard the value. The first of these elements is bound up with the form of the social organization. The politically important group is usually a majority. It may not be so as in despotisms, theocracies or dictatorships. The second, to my mind, does not always apply. A criminal does not think of a minority or a part of the group consciously disputing the value appreciated by the other group in every case. He often commits a crime without caring what others may be thinking of his act. The third element is clear. This comprises the punitive measures which represent the reactions of the group predominating. When a crime is committed, these relationships are involved.

To include these elements in the definition itself, crime has been defined by Parmelee as follows:

> A crime is an act forbidden and punished by the law, which is almost always immoral according to the prevailing ethical standard, which is usually harmful to society,

which it is ordinarily feasible to repress by penal measures, and whose repression is necessary or is supposed to be necessary to the preservation of the existing social order.

It has already been mentioned that acts have often been stigmatized as criminal for magical or religious reasons. We have discussed these at length already.

Despots have also stigmatized acts as criminal when obnoxious to them or their families. As the power of the kingship has declined, the extent of such legislation has dwindled. It was encouraged in the past by the divine traits which were attributed to kings.

There has been much penal legislation, likewise, in the interests of classes. The politically predominant class for the time being has usually availed itself of the opportunity of preferential legislation in its own favour.

I mention these only because it should be evident that crimes created by despotic, religious or class legislation do not always conform to the characteristics of crime described above. The acts penalized so usually do not injure society as a class but only small groups within ; their repression may thus not be necessary for the preservation of the existing society.

With regard to causes of crime, I should refer the reader back to chapters alredy describing causes of criminality in general. There is no single cause of crime just as there is none so for some diseases.

Apart from the sociological point of view, crime as law requires, involves two elements :

(1) Illegal conduct in the form of a voluntary conscious act (or a neglect to perform an act which is a duty);

(2) An intent, which may be of two kinds,

(a) general, a so-called guilty mind (mens rea) and

(b) specific, which is an additional type that must be present in some crimes.

The reader is referred to the definition of 'criminal' where I have elucidated some of these terms. I shall briefly touch upon these here as well. Sir Hari Singh Gour in his Penal Law of India has very ably elucidated these terms from the legal point of view.

'Illegal conduct' excludes acts which though vicious from moral or religious points of view have not been recognized by law. All extramarital relationship is forbidden in Islam but present-day law does not view going to a prostitute as an illegal act.

'Voluntary conscious act' excludes acts that are involuntary or unconscious. The word 'voluntary' has been variously interpreted. The Indian Penal Code defines 'voluntarily' thus :

> A person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

This definition is borrowed from that of 'wilfully' as prepared by the commissioners on the Criminal Law of England.

Sir James Stephen defines a voluntary motion to be "a motion or group of motions accompanied or preceded by volition and directed towards some object. Every such action comprises the following elements :—knowledge, motive, choice, volition, intention, and thoughts, feelings and motions adopted to execute the intention."

The word has been given an artificial meaning apart from its popular one solely for the purpose of the Indian Penal Code. This to achieve an object as the framers say :

> In general we have made no distinction between cases in which a man causes an effect designedly, and cases in which he causes it with a knowledge that he is likely to cause it. If, for example, he sets fire to a house in a town at night, with no other object than that of facilitating theft, but being perfectly aware that he is likely to cause people to be burned in their beds, and thus causes the loss of life, we punish him as a murderer.

The predicament of voluntary offenders will in that sense include not only those who directly intend to inflict a particular injury, but also all such as wilfully and knowingly incur the hazard of causing it. This is all very well but the framers were not oblivious of the fact that there is a class of cases in which it is absolutely necessary to make a distinction. To quote their own example, 'if a person attacked by a wild beast should call out to his friends to fire, though with imminent hazard to himself, and they were to obey the call, we do not conceive that it would be expedient to punish them, though they might by firing cause his death, and though when they fired they knew themselves to be likely to cause death.' This only stresses the fact that circumstances of the particular case are always to be considered.

A man entering a shop and by mistake carrying away a valuable watch does not commit theft because the taking away is not a voluntary conscious act. A lunatic firing a pistol near at hand and thereby wounding somebody is also exempted because he is presumed to be incapable of a voluntary conscious act.

'Neglect to perform an act which is duty' comprises illegal omissions. This has been provided for in section 32 of the Indian Penal Code. A Magistrate was thus convicted of abetment in a case where he was present while certain police constables were wrongfully confining and causing hurt to a villager with a view to extort a confession.

Intent would be difficult to prove in many cases. Law, however, presumes every man to intend what people would commonly expect to be natural and probable consequences of such act. This we have seen only lately. Where a person commits an unlawful act, unaccompanied by any circumstances justifying its commission, it is presumed that he has acted advisedly and with an intent to produce the natural consequences of the act. If, for instances, a man is proved to have wilfully set a house on fire, it was held that no further proof to injure was necessary. As Sir James Stephen puts it, 'the only possible way of discovering a man's intention is by looking at what he actually did, and by considering what must have appeared to him at the time the natural consequence of his conduct'. The test to be applied is not that of a hypothetical reasonable man—but of the person whose intention is to be read.

I have described the import of intent in discussing the psychology of the criminal. I should digress here by way of restating the mental processes in criminality.

As Sir Hari Singh Gour puts it, the initial stage is the rise of some desire in the mind. A desire is connected directly or indirectly with the instinctive urges. A desire is accompanied by the idealization of some movement as effecting its consummation. The causal relation of the action to the result is recognized and the efficacy of the action realized. The action thus idealized has then to be carried into effect. The preparatory stage is reached by volition, which is the exercise of the will leading up to fruition of the desire. Thus in a voluntary action the desire of the end is the cause of the desire of the means. The former is the motive and the latter the intention.

The chain has been elucidated in the chapter on the psychology of the criminal. I need emphasize here, however, the distinction between the two, a man's intention and motive. A person may act from a laudable motive, but if his intention causes wrongful loss, his crime is complete irrespective of his motive. So the Indian Law Commissioners wrote :

> We do not find that it is permitted to any person to set up his private intentions, or to allege virtuous

motives, simply as defence or excuse in a criminal charge. We hold with the English Criminal Law Commissioners that 'to allow any man to substitute for Law his own notions of right would be in effect to subvert the Law. To investigate the real motives in each case would be impracticable, and even if that could be done, a man's private opinion could not possibly be allowed to weigh against the authority of Law'.

A Hindu snatching a cow away from a Muhammadan so that it may not be killed, a Muhammadan demolishing an idol so that it may not be worshipped, a prohibitionist removing liquor from a man about to drink it, may each be doing so in pursuance of motives which from the respective point of view may even be virtuous, but each will be guilty of an offence all the same.

At one time it was commonly held that guilty knowledge· was the essence of a crime. *Mens rea* or guilty knowledge is still essential to prove all guilt, but while in certain Statutes this is expressly provided by the insertion of such words as 'knowingly, wilfully' etc., or the like, in others reference to the state of a man's mind is omitted. In the vast generality of cases *mens rea* need not be proved but is presumed whereas in some cases, it must be proved by the prosecution. Example of a specific intent is found as in case of burglary in which under English law the specification of intent (to commit theft) is a material part of the indictment.

Absence of knowledge that the act is forbidden by law does not prevent the holding of the necessary guilty mind. It is presumed that every citizen ought to know the law. Ignorance of law is no excuse. If this were admitted as an excuse, administration of the criminal law would be impracticable. The presumption of law to the effect can be justified from the fact that almost all crimes are also morally reprehensible, generally speaking. In cases of a new legislation, however, the Government ought to take steps towards giving it the widest publicity practicable. This is becoming increasingly difficult on account of the ever-increasing scope of legislation. On the other hand, however, it is difficult to assume that every citizen would be aware of all laws or that he should spend the greater part of his life cramming or digesting them. A compromise is ordinarily effected between these two positions by giving the presumption full force in cases of ordinary crimes and dealing with the offenders in cases of quasi-criminal acts leniently. I have discussed this topic further towards the conclusion of Appendix B.

CHAPTER XII

THE EXTENT AND TYPES OF CRIME

The extent of crime indeterminate—General difficulties in statistics of crime—Criminal statistics as a guide to police efficiency—Control of crime a misnomer—Volume of unreported crime in India—Reasons—The need for better reporting of crime—Ways of securing this—Is crime increasing ?—Different views—Nature of the bulk of crime to-day—The pervasive nature of criminality.

The extent of crime has been the prolific theme, alike for the optimist and the pessimist, both of whom at times indulge in incredibly precise statements with regard to it. It would appear from what we have seen so far in respect of the pervasive nature of crime and criminality that, in the wider sense in which criminologists study it, the extent of crime will cover almost entire humanity, excluding the children and the insane who are incapable of committing crime. Every person is a 'potential criminal' inasmuch as every person experiences impulses and desires which if gratified would violate some law. These impulses and desires arise out of the instincts and emotions, the principal determinants of human behaviour. Nor can it, in actual practice, be assumed that a man does all through life keep himself from gratifying them to avoid conflict with law. He 'that is without sin' can perhaps conceive of him that is *incapable* of crime.

This unfavourable refelection on humanity comes to be mitigated when we remember that we are *evolved animals* rather than *undeveloped angels*. Although we are guided by reason in the main, animal passions are not altogether dead within us. Most of us, however, avoid major conflicts with law or acting in so flagrant a manner as to attract attention. In many cases, again, law has no means of knowing or taking action. The way in which mankind advertises virtues and conceals frailties and failures makes it impossible for the criminologist to arrive at a correct estimate.

If there were a system of candid confession on the part of everybody, something like the auricular confession of the Roman Catholics, something approaching a true estimate of human criminality might be possible. Having, none, the criminologist has only to speculate by studies of average people and by generalization from a few. On one's own basis again, one would arrive at a widely differing estimate from another. The story of the thief and the saint meeting at night and each thinking of the other as one like himself illustrates the unreliability of subjective conjectures.

The Criminal Administration, however, does not take upon itself the impossible task we have been counting. It concerns itself with what is merely practicable. It will battle against known crime and knowable criminals. It will account for crime weekly, monthly and annually and publish its achievement by way of dealing with it and keeping it 'under control'. It will give figures, compare, indicate increase or decrease by so many per cent. and go ahead. It would perhaps scoff at the criminologist as a mere airy theorist while assuming for itself the virtue of a practical, man.

Should the two really drift farther and farther apart? A student of crime should think certainly not. The Criminal Administration cannot, of course, pry into secrets of every citizen; it can nevertheless widen its outlook and look at the problem of crime in all its aspects. If an agency were merely to recount its present achievement in comparison with the past, it might go the way of all frailty by advertising achievement and concealing failure.

The theme of the present work is to bring about a rapprochement between society and its agency, relations in this country being what are notoriously known. The public turns almost a deaf ear to what administrative achievement is reported. It would not give even credit *due.* The fact that it is so difficult to satisfy the public is true. There are, however, remediable causes, too.

Let us, first of all, take up the eternal difference obtaining as between the *actual* and the *portrayed* states of affairs. In other words, let us examine critically the value of criminal statistics.

The statistics of crimes are known as the most *unreliable* and most *difficult* of all statistics. We have seen how even scientists themselves have been misled into inaccurate reasoning by a too ready acceptance of these.

The first difficulty that may be mentioned is that *laws which define crimes change.* The statistics of a quarter, half or even whole of a century could tell us but little in comparison on account of the changes in human laws, the sum of which has rendered life in a later corresponding period so different from the previous. The increasing complexity of civilization is bringing into operation new laws and almost every decade is adding more to the number of crimes than the previous one. The tendency is, howerver, towards increase of minor crimes more than major ones. The factor nevertheless disturbs statistics badly and one has to be on one's guard in basing conclusions on mere numbers.

The second difficulty is that *the number of crimes actually committed cannot possibly be enumerated.* As long as mankind go on concealing crimes on their own parts, the only agency to ventilate wrongs will be the party injured.

Only recently has society adopted a machinery for investigation of crimes and detection of criminals. Before this and for the most part, the injured party could complain and demand action only in cases where the accused were known. 'Emperor vs. *unknown*' was a feature almost unknown.

Theoretically and legally, the Police are bound to register all cognizable cases, and investigate them unless they be of a very petty nature. These include cases where the accused are not known as well. These, however, refer to the more serious crimes ; the less serious ones have not been made cognizable by the police. These minor crimes are less known as there is no agency to register them and people are apt to suppress them, partly compounding a great many privately and partly not minding them on account of their obvious triviality. Here, then, and with respect to these minor noncognizable cases, there will remain the greatest amount of uncertainty as between actual incidence and public knowledge.

So far as the more serious crimes go, the legislature has provided not only for free registration and investigation by the police but ensured accurate reporting by making non-reporting penal and making the complainant, the village chaukidar and headmen responsible for reporting them. The police records should thus be the best index of the number of crimes committed, 'provided the police departments uses honesty and ordinary clerical efficiency in its reports.' In making these observations I am by no means referring to conditions in Bengal alone or in any particular part of India. They apply more or less to every country ; and of course, to India *more* than *less*.

Unfortunately the above-mentioned 'proviso' is not always respected. And that for various reasons. Recorded crimes are affected by police policies and even public opinion. As Sutherland puts it, 'the principal criticism which has often been made of these statistics is that the police department will not be honest in making its record public, but will conceal many of the crimes which become known to it in order to protect its own reputation'. I do not mean that the police department has any such silly idea as its avowed policy as to show manipulated figures to enhance its prestige. *It can, however, do incalculable harm by stressing on improved figures every year as an index of better police work.* It is the unthinking bulk of the personnel that is apt to and often does actually, go astray and readily comes up with pleasing returns.

I must incidentally mention that the so-called, 'control of crime' for which officers are sometimes given credit is a downright hoax. I have never seen an honest officer 'controlling' crime anywhere under present conditions. On the other hand, crime goes up as soon as there is an indication that informations are easily recorded. I am definite in that the so-called 'control of crime' should be tabood out of official recognition and something like 'treatment of crime' substituted for it. From what we have studied of the pervasiveness of crime and criminality and the various sources of crime, it simply amuses me when I hear of certain officers as having controlled crime in anything like a considerable area.

The problem is far too complicated for any one agency to solve ; it is doubtful if all human agencies so far developed can solve it all together. The police should neither claim nor be expected to solve the problem of crime ; it can only do its best to mitigate it. I would not accept a commission guaranteeing a certain percentage of reduction of crime even if I were given ten times as many policemen and officers as there are at present. A bargain in that way should never be made. The problem has to be attacked on all fronts to achieve anything like success and all the ingenuity of human brain and the pooling together of what is good in mankind will be necessary in this direction.

I have disturbed crime figures almost everywhere by simply wanting to know a truer state of affairs as obtaining in the interior and encouraging people to come forward to lay informations of crime they are legally bound to do. The figures thus disturbed may alarm others but not me. I am yet far from satisfied and think there is room for better propaganda work in this respect.

A certain District Magistrate, a few years ago, sent crime figures up to a maximum which had not been reached nor has yet been in this district (Noakhali, Bengal) by simply asking complainants to lodge informations of cognizable cases with presidents of union boards and the latter to take steps to refer them to the police and to make sure that the informations do reach the destination. The outcome was an alarmingly huge volume of reported crime.

It is unfortunately true that the impression among the public has prevailed that informants are not entertained at the police station with any reasonable amount of courtesy and that investigations by the police would only mean harassment to all concerned. This impression is the outcome of the traditionally hostile attitude of the public towards the police and which was unfortunately confirmed in many cases by dishonest and high-handed treatment by individual officers and men. Everything possible is being done to counteract such tendencies.

It is impossible at present to secure cent per cent. report of all cognizable cases because, again, the public, uninformed, ill-informed, uneducated, superstitious and in many cases fatalistically resigned, will put up with a great many evils of which it apparently sees no remedy. Police investigation in the vast majority of petty cases results in nothing, it thinks. Then there is the fear of the criminals themselves, known and unknown, who may, if harassed, think of doing greater harms. The encouraging factor in this direction would be better detection of cases so that the public may hope for success in more cases and the criminals may not count upon remaining undetected and at large for any long period. This is, however, bound up with the question of scientific aid and education to be made available to the personnel of the police and with reorganization of the investigating staff so as to afford them time in which to pay undivided attention to individual cases. We shall discuss these problems in due course.

At the present moment, however we can do a great deal by propaganda work in favour of better reporting. I am definitely against quoting figures in support of police efficiency in a matter like this and I cannot conceive of any discriminating officer who will disagree with me. Where is any sense in quoting that in the last year as against the year previous, figures of crime decreased by so many per cent. where no one has the vaguest idea as to what proportion of the total incidence of crime these figures represent or if the same ratio, whatever that be, has or has not been maintained in the two years ?

Those who have yet some doubt on the point may easily verify my contention.

1. Let an officer not directly concerned with crime administration of a particular locality proceed to appeal agreeably to the villagers for information of all the crimes that have been committed within it in course of a year and take a census of such cases. Let him then compare reported figures. To get a better idea, many such average localities will have to be taken.

2. Let him, again, ask each aged villager as to how often he has in his life seen his house burgled or moveables stolen. After the villager has given out what he knows without reserve, let the officer confront him as to what percentage of these cases he has actually reported to the police. If a small, why ? This last question may make ugly revelations or elicit unfavourable reflection but, there, we *are* concerned with finding out the real thing.

3. Let him scan the offical reports and returns as to what proportion of cognizable cases is reported to the magistrate and what to the police. Theoretically, a complaint before a magistrate should cost money and not only that. The party has to bear all costs. A complaint before the police, on the other hand, should cost

nothing, should secure better handling, should be better prosecuted *and free.* Why is it then that so many cases are reported to the magistrate direct although a thanah would be nearer at hand ? I have no mind to cloud the issue here by quoting figures which can be easily referred to.

On the side of the police, a great deal can also be said. Most of the thanahs are understaffed ; to my mind every thanah is *really so* although recorded figures at some places would mock at such an assertion. That is only by the way ; we are viewing at things beyond the *red tape.* The public, again, is too apt to judge our activity and efficiency by a reference to figures we handle or quote.

Let us thoroughly recast our viewpoints. Judge us, I say, not by result alone ; or rather do so, when you really *can ascertain* it. Science is more concerned with method than with result. We should confess that we *treat* crime with the same good-will as the medical profession does treat disease. We can no more stop crime than the doctors disease, if society in our case does not attack crime on all fronts as in theirs, if it does not care to observe cautions of health and hygiene.

As to direct methods making for better reporting, I would suggest the following :

1. Take away the fear of averages and numbers from our officers. Both the public and the official heads should refrain from basing everything on so unreliable a factor as criminal statistics. It is for sifting brains to scan the romance behind numbers. The Pythagorean task should be left to knowing hands. There is a trite little rule of caution in the Police Regulations, Bengal, which runs :

> Statistics are of great value to inspecting officers and specially to Superintendents, indicating as they do to officers whose work needs special scrutiny and the areas and kinds of crime on which they should concentrate their energies. But to go farther than this and to use them as the chief means of appraising work is deceptive and teaches subordinate officers to belive that credit can only be gained by the maintenance of a high ratio of convictions to cases and a low return of crime.

2. Instead of the odium which attaches to the officer who has his crime figure swelling, credit should be given to him for a large number of *true* cases recorded. Let us publish all true cases reported ; the only case that is not true is the one that is definitely proved to be false by facts. It is absolutely essential that these figures should be kept with scrupulous honesty and with

no idea of producing effects. It must be remembered that these figures are and will be, otherwise, like most balance-sheets in doubtful companies, cooked like those by dishonest accountants with a profit or loss on whichever side may suit the public for whose gullible edification they are produced. Critics may argue, will not officers then remain content by merely reporting cases in large numbers ? Impossible. They will attract attention and it is for the whole department to pool its resources to do good to such affected parts. I should think the officer will *have* to exert more himself. If he fails to cope with the situation as in many cases understaffed forces will do, it will be for his superiors to help him. After all, isn't a conscientious doctor who feels he is not up to the case in hand and refers the patient to a better authority greater than the quack who minimises the risk and irretrievably injures his patient by holding on to him ?

3. Chaukidars and dafadars must be warned against suppression and punished for it. They are legally bound to report such cases and the responsibility must be brought home to them. The dafadar must certify weekly having come across no more cognizable cases than actually

reported. His diary must show short accounts of particular cases occurring within his jurisdiction in the sequence of their coming to his knowlegde. These can be easily ensured as the law itself contemplated the chaukidars and dafadars being responsible in this respect.

4. Union Boards should record short notes of cases reported to them and steps should be taken by them to send the informants or the chaukidars to police stations with the informations. This was actually experimented in this district (Noakhali, Bengal) with success.

5. Superior officers should ask for public co-operation in course of their tours in the interior. Villagers are also responsible for reporting specific cognizable offences to the police and are even liable to prosecution for failure to. Instead of prosecuting them for this in the present conditions, we might encourage them in this direction.

6. It may be publicly made known that in cases of doubt the members of the public would be welcome to intimate to the Superintendent of Police or the corresponding officer the fact of their having lodged due information with the police. This, it may be promised, will ensure that their cases receive the attention due to them.

7. Rigid observance of the legal and departmental formality in the matter of intimating results of cases to complainants or in the event of refusal, the fact of it, must be enjoined.

8. Steps should be taken to ensure that informants are treated with courtesy at the police station and are not kept unduly waiting. To secure clerical efficiency and ready availability, steps may be taken to employ permanent hands for recording of informations and for general sherista work. The system obtaining of any officer as and when available recording these is obviously faulty.

These are only a few steps that could be taken in this direction. I do not foresee in the event of their being ever taken, a very happy state of affairs to be disclosed for some time at least. This, however, should not discourage one, for we can only do what is practicable and for more we shall expect society to lend us additional hands. The chances are society will be fair to us when it knows of our difficulties more intimately.

To revert to the general discussion in which we were engaged, I should refer the reader to the topic I already discussed in the last section of the introductory chapter as to if crime is increasing on the whole. This topic has been a prolific theme of discussion although from the very nature of the question it should appear to any reasonable man that the answer will remain indeterminate. One may ask before trying to reply to the question, as compared to what ? Will periods be compared ? But the population has gone up in places like India and life has become more complex. New crimes unheard of in the previous periods are being added to the list. The machinery of recording crimes has developed beyond comparison as well. Will pople be compared ? But the difficulty we have just seen about knowing the precise volume of crime will stand in the way of an equitable comparison.

Crime has undoubtedly increased in gross volume while the net volume has never been nor will ever be ascertainable. This is, however, no adverse comment on the police or the administration as whatever security of life and property the modern society is enjoying is due to the growth of their efficiency as also to the increasing enlightenment of the individual citizen.

The typical crimes of the most highly developed and succesful nations are largely misdemeanours caused by the fine legal adjustments made necessary by the increasingly complex social life. In other words, as Drahms and Hall contend, there is a change in the direction of minor offences rather than serious ones, noticeable.

This is a general proposition which will perhaps find support in the majority of civilized and well-organized countries. This, again, only in the wider view of things generally. Criminal statistics here and there may indicate the other way but they, as we have seen, do always reflect only a partial state of affairs.

The criminal statistics for England and Wales always provide plenty of material for reflection on the part of both the public and the adminstration. The state of affairs disclosed, for example, for the year 1931 is very satisfactory in some respects and disturbing in others. The figures for non-indictable offences show steady improvement in social habits as compared with returns for 1910-14 and for 1925-29. Drunkenness and assault cases declined from over 230,000 annual average during the first-named period, and 97,000 average in the second named to 69,000 in 1931. Poor-law offences indicated the same trend. Cruelty to children cases numbered about one-fourth of the pre-war average and the same remark applied to offences against the Education Acts. On the other hand, the motor car provided an enormous increase in offences under the Highway Acts—a leap from

160,000 in 1924 to 274,000 in 1931. Traffic offences constituted 43 per cent. of the proceedings for criminal offences in 1931. Serious crime, also, seemed to be on the increase. Burglary, housebreaking and shop-breaking increased 60 per cent. during the same period. Robbery with violence provided as many cases in the Metropolitan Police district as in the whole of the rest of England and Wales. Larceny cases went up 40 per cent. since 1924, whilst fraud and false pretences have increased by 66 per cent. The blue book containing the Home Office report also commented on the prevalence of juvenile crime, especially in regard to theft—the largest relative increase in housebreaking being shown to have been due to young persons ranging in age from sixteen to twenty-one.

A comparative review of reported crime in India would serve no useful purpose for reasons I have so lately discussed. The ratio of report to actual incidence would be far higher in England and Wales than in any province in India. Many of the causes which undermine reliability of figures here are absent there.

Figures of reported crime of a heinous nature in India including Burma have been quoted in Appendix C. I shall not bore the reader by quoting them again over here. Many of the quasi-criminal acts enumerated above would figure only too feebly here. Burglary, house-breaking and shop-breaking indicated an increase there probably because they are being increasingly better reported. These are the crimes which, in India, are the most suppressed by people. Juvenile crime does not really figure so prominently in India as I have shown in the chapter on Juvenile Crime. The reader may refer back to it. I have reviewed specific crime in India in Appendix B.

I cannot leave this topic without expressing my impression of the high degree of reliability of the English criminal statistics so far as they portray the real state of affairs within. The report calmly records the increase or decrease even though the high percentage of fluctuation might unnerve alarmists or embitter public feelings against the machinery dealing with crime. This machinery there is admittedly efficient and the public informed and understanding. May we not here do the same and expect the same as well ? I have pleaded for this only a little while ago. We can face reality, however ghastly it may seem, and only do the best we can. We may very well note that in spite of the Metropolitan Police being perhaps the most efficient in the world, robbery with violence provided as many cases in the metropolitan police district as the whole of the rest of England and wales.

Apart from these recorded statistics, crime is much more pervasive than people should imagine and many types of offences are widespread but seldom result in prosecution. The student of crime has to note this carefully although the remedy may not seem to be immediately in view. This pervasiveness of crime, is, as I have been so often indicating, disturbing to humanity but should be studied if only to try to counteract it by all-round attacks on every front. The police may be entirely powerless in many cases but it should be the duty of the individual citizen,—the father, the mother, the teacher, the friend,—the function of education, training and social intercourse,—to bring about an improvement, however gradually.

Unfortunately, the man in the street does often think of the criminal in terms of the thief and the burglar only. This is a mistake which I have so often stressed. Everybody abhors crime on his own standard. Most often this abhorrence for certain crimes is shared by criminals themselves, one class looking down upon the other. The sexual offender will loathe thieving ;

the thief, often again, will detest even casting an amorous glance at a woman.

Some of these offences are crimes in the strictly legal sense, but prosecution is avoided because of the political or financial importance of the parties concerned. Political influences are often brought to bear in favour of offenders and this may happen in any stage of the case against them. Men in high position may come to screen their proteges, ministers and members plead for their kins and not infrequently members of the inferior services are put to a very awkward position by either complying with requests or not doing so. Big businesses often act in a manner contrary to law but the lowly policeman or law-officer neither dares tackle them nor perhaps can do so effectively in the midst of evasive layers they set up before them. The individual taxi-walla is no more to blame than the railway company running at times dangerously overloaded trains. A Zemindar may be causing more bodily pain than all the casual assailants in the place. A rich man can hush up the most revolting crime by ‘fixing up’ things in various quarters.

Thus the danger from robbery is clearly realized, for it involves direct sensory processes and is based on social relations which have existed for many centuries. Theft by fraudulent advertisements and prospectuses is a recent development and affects persons many thousands of miles away. The comptroller of the currency, as Sutherland states, reported that approximately three-fourths of the national banks examined in a particular quarter were found to be violating the national banking laws. Dishonesty was found in 50·4 per cent. of the national bank failures during the period 1865-1899, and in 61·4 per cent. during the period 1900-1919. The highest rate of dishonesty in bank failures was found in the New England banks in the period before 1900, where it was 76·5 per cent., but after 1900 this decreased to 58·3 per cent., which was slightly less than the average in the United States. This topic could be enlarged *ad infinitum.* 'Misleading balance-sheets which public accountants have been able to invent and develop, wash sales by which the value of a security is fraudulently determined, concessions in rent by real estate dealers for the purpose of fraudulently increasing the sales price of property, excessive and misleading claims made by the manufacturers, vendors and advertisers of patent medicines, tooth-paste, cosmetics, and many other articles, transfer of deteriorated securities from the banker's own possession to the trust funds under his direction, and a considerable part of present-day salesmanship and of advertising illustrate this kind of criminality.'

Some of the offences, again, are not prosecuted because of the difficulty of securing evidence sufficient for conviction. While the above class of offences are mostly decipherable by close scrutiny into books and papers, the one of offences falling under this class are difficult to prove. Dishonesty and extortion on the part of the public servants themselves come under this class. The offers of bribes are usally made by those who have some immediate gain in view and they will naturally be the last persons to give out the fact of their having 'fixed up' things and thus thwarted the course of law. In cases of extortion, parties may be eager to ventilate grievances but are often dismayed by the unpromising prospects. They can hardly lead evidence with success. This is a topic that has drawn public attention at the moment and I shall discuss it at some length in Appendix B when detailing the law of offences by public servants.

Among other things, are the fraud involved in insurance, both on the part of the insured and the insurers, fraudulent reports of property and income for tax purposes, misapplication of funds by denominational colleges and even churches, cheating by misrepresentation by officers incharge of public works or contractors, etc., etc.

All these present a vast problem before society. Nor can society brush it aside without attching to itself the odium of conniving at crime by the more powerful class while crushing the weak. It is most invidious to recognize the 'Brahmin' and the 'Harijan' in the field of law where equity and impartiality should be the first principles. The white-collar criminaloids are no less dangerous to society from the point of view of effects on private property and social institutions. In general, underlying these failures to prosecute is the lack of a developed social feeling and ethical code in the groups concerned, and to some extent, in the general public. The crimes of the slums are direct physical actions,—a blow, a physical grasping and carrying away of the property of others. The victim identifies the criminal definitely or suggests a particular individual or group. The crimes mentioned, however, are mostly indirect, devious, anonymous and impersonal. Will they remain ever outside the rule of law ? Everybody should think.

CHAPTER XIII

FORMS OF CRIME

Sec. 1. Classification of crimes—By criminologists—By Law Codes—By the Indian Penal Code—Indian conditions and conditions abroad.

As great a diversity exists with regard to the classes of crime as to the classes of criminals. We have seen how criminals have been divided and subdivided by writers and codes. This was due to their looking at criminals from different angles. Crime has also been classified in so many ways.

Efforts have been made to classify crimes, different societies and different groups of society basing classification on their own needs or interests. Criminologists have classified them in their own ways and from the particular points of view they were considering them at the time. Lawmakers have done so in theirs own. Criminals themselves classify themselves. Policemen go their own ways dividing and subdividing crimes at great length, a single type, for example theft, being known in various forms according as criminals employ various modus operandi. The newspapers and the public have also their rough classification, 'lurid', 'horrid', 'brutal' being some of the appellations with which they qualify some of the crimes.

Bonger has classified crimes by the motives of the offenders. According to him, economic crimes comprise those with a view to gain. These are again further divisible into crimes,—occasional or professional, by necessity or cupidity, by force or fraud, etc., etc. Sexual crimes comprise those that violate sex relations. These are further divisible according as is the object injured or the consequence to the family. Political crimes and crimes of venegeance have likewise been elaborated by him. No crime, however, can be reduced to any one single motive. A desire for excitement or vengeance may be very important in such as economic, sexual or even political crimes. The classification is thus defective.

Dr. Mercier has adopted another standpoint. He has divided crimes into international, such as piracy, slave trade, filibustering ; and national which is subdivided into public crimes such as treason, etc., and private, such as crimes against individual citizens or groups. Private crimes are mostly self-advantageous and can again be subdivided according as they are directed against life and safety, liberty, property, reputation and feelings, etc. It is difficult to conceive of crimes respecting zones or boundaries.

A clearcut classification is the following :

1. Protection of the person (life and limb).
2. Protection of property.
3. Protection of government and other public interests.

It is, however, difficult to classify some crimes under one or another of these heads. The heads will in many cases overlap.

Crimes are frequently classified as crimes against the person, crimes against property, and crimes against public decency, public order and public justice. The same difficulty arises here also.

Crime is a complex phenomenon, coming, as it does, under human behaviour and 'the wealth of Nature fights against arrangement on any artificial plan.'

Various legal codes have, however, proceeded to divide crimes and the value of these classifications has been entirely relative to the respective criminal procedures. No scientific value is either claimed or does accrue.

The best-known classification is that ordinarily done with respect to atrocity as felonies and misdemeanours. According to the American Codes, a crime is :

1. A felony ; or,

2. A misdemeanor.

Felony. A 'felony' is a crime which is or may be punishable by

1. Death ; or,
2. Imprisonment in a state prison.

Misdemeanor. Any other crime is a 'misdemeanor.'

This division is not very satisfactory inasmuch as many offences which are classed as felonies in one state are classed as misdemeanours in neighbouring states. Felons and misdemeanants are also distinguished on the same analogy but this is quite fallacious for an individual may commit a felony one week, a misdemeanour in another and the danger to the group cannot be judged adequately from one act.

The English Common Law divides thus :

1. Indictable offences, i.e., those which admit of trial by jury.
   - (a) Treasons.
   - (b) Felonies.
   - (c) Misdemeanours.
2. Petty offences—triable without a jury.

Treasons are also felonies but have been ranked high. Murder, homicide, rape, arson, burglary, robbery, theft, etc., are felonies.

The French Code distinguishes crimes, misdemeanours, and contraventions according to the seriousness of the offences. Crimes are punishable with all sorts of penalties, misdemeanours with imprisonment of over 5 days but are less serious than crimes and contraventions are the most trivial offences, punishable by imprisonment from one to five days, or by a nominal fine. The division, however, is anomalous inasmuch as crimes have been differentiated from the other two although these two should really be included within crimes.

The Indian Penal Code adopted the simpler but less discriminating term, 'offence', in place of treason. felonies and misdemeanours. The Law Commissioners avoided the use of these terms altogether. The distinction contemplated in the English classification is, however, brought about by the division of all offences as regards procedure into (1) warrant cases and (2) summons cases. Cognizable and noncognizable by the Police is another division. Compoundable and noncompoundable is yet another division stressing the nature of crimes. Warrant, cognizable, and noncompoundable cases are the more heinous ones. I need not labour to thrash these terms further here. They are well-known.

The Indian Penal Code has provided practical bases of classification just indicated and it obtains in British India as well as native states which have adopted the code.

Conditions in India are not fundamentally different from those abroad but as every country has peculiar features of its own, India has hers. We shall review Indian crime as also the Indian law relating to it in Appendix B.

PART III

Society's Reaction To The Criminal

Punishment

CHAPTER XIV

THE ORIGIN AND EVOLUTION OF PUNISHMENT

Punishment is taken up for study immediately next because it formed the first channel in which private and social reaction came to be expressed. Man punished before he judged. Punishment naturally partakes of the nature of inflicting pain, bodily or otherwise, which pain when inflicted offensively and aggressively is known as a crime but when done defensively and as a reaction, is known as punishment. The analogy will be apparent when we recall what happens in the physical world, viz., to every action there is a reaction.

If we realize this, the nature of punishment will not remain long obscure. If I hurt you and you immediately react by striking me, we both do the same thing. I am however, said to be causing hurt, and committing a crime, whereas you may be said to be only *punishing* me. Thus while society recognized the right to private punishment, as it does to a great extent now the right of private defence, crime and punishment were only two aspects of the same thing.

The question, then, as to how punishment arose can be answered in the same way as to how crime arose. It is in the very nature of organisms to react to external action. Man thus reacted without being consciously aware of what he was actually doing and what he should really be doing. It was a case of simple action and reaction. Just as action was primarily instinctive so was reaction primarily instinctive.

Human reason, however, came to intervene and has done so more and more prominently. The first step towards civilization was taken when man began to abuse his object of anger instead of giving him a blow. So also the corresponding step in the way of reaction was taken when he complained to the superior instead of attacking the offender. It is this tendency that is our present topic of study.

We have studied the human instinct of pugnacity and the emotion of anger as also the other instincts and emotions. Human actions and reactions arise out of them mainly and are only tempered by reason. The emotion of resentment at injury led to private vengeance. The instinctive reaction of the wronged individual imposed upon the offender such punishment as lay within his power and as was suggested by his own sense of injury. He or his kindred were judges of the severity which should be visited upon the offender. The duel was a survival of the primitive method of settling disputes and the legal duels in our courts are echoes of those methods.

Illustrations of the working of private vengeance are available from various sources. In the Hebrew Scriptures we have a number of illustrations. Writers describing customs and manners of savages have mentioned the practice. Undoubtedly when the machinery of administering justice was anything but well-organized, private vengeance served a very useful purpose. It operated as a preventive.

With the growth of groups, individuals within the same group continued reacting privately to injuries by other members and it became the growing concern of the group that in so doing, individuals did not always respect limits. The group took cognizance of these excesses and the custom grew up for individuals and their families to make settlement with the injured and his family. Other complications, however, arose in their own turn. When a member of one group injured one of another the blood-feud lay between the two groups. A sort of group war was waged. Here, again, with the passing of time, the differences came to be composed by payment of money or otherwise.

This was all very well but along with group organization, the group itself began to be apprehensive of its own existence. Magical and religious ideas developed and offences, such as, treason and witchcraft, came to be recognized. Punishments now did not depend on mere instantaneous and instinctive reactions of the group for the time being but came to represent the anxiety of the group to purge itself clean of dangerously infectious members or those grossly displeasing to the gods.

There were, however, limitations that grew up in primitive societies in these bloody procedures.

The Right of Sanctuary. Pagan temples as well as Christian churches, formerly afforded temporary sanctuary from the hand of the private avenger or from the processes of law. The staying was until such time as the question could be settled as to whether the injury was accidental or deliberate. The privilege was abolished in England in the 17th. century.

Cities of Refuge. Among the Hebrews an extension of the above right was provided in the cities of refuge. A passage in the Old Testament so describes this institution that the man who committed an unintentional murder could flee to these places until his case was examined by fully constituted authorities. As long as the man remained there, the avenger could not attack him with impunity.

The Truce of God. An institution of much later occurrence. When bloodshed was rampant, the church undertook to regulate homicide. According to a regulation all warfare was to be suspended from noon on Saturday until Monday. We find relics in Islam of all these institutions also. The period of truce was extended gradually. It declined with the growth of ordered state-systems.

With the evolution of written law-codes under the auspices of religion or of custom, the state administered criminal law as ordained. Gradually civil tribunals took the place of religious agencies and other theories of punishment came to supplant the old ideas.

CHAPTER XV

THE FORMS OF PUNISHMENT

Sec. 1. Capital punishment.

In taking up different forms of punishment for discussion, we shall do well to review them one by one. We shall follow the historic method more or less, tracing the origin of each specific form, its use in the past, its efficacy, and indicating reforms possible, if any.

Capital punishment is the most ancient and by its very nature is the most drastic of all. It must have originated in the primitive societies as a reaction to murder and similar grave offences. The relations of a murdered man apparently pursued the offender and were satisfied with nothing short of the offender's death. The superstitious group also considered this method of punishment best suited to purge it off an accused member.

The religious codes thus came to approve of this form of punishment; nay, they rather stressed its indispensability. We read in the Bible, "Whoso sheddeth man's blood, by man shall his blood be shed....All things are cleansed by blood and apart from the shedding of blood there is no remission."

Islam also retained the death penalty and stressed its deterrent value. Vishnu ordained, "Great criminals should be put to death." Almost all the religions can be quoted in favour of this form of punishment. Custom sanctioned it and public opinion came to consider it as indispensable.

Philosophers and jurists also pronounced their opinions on this important topic.

Plato observed, "When a man is never innocent but in sleep it is better that he should die than live," stressing thereby the hopelessness of incorrigibles. Galen and Seneca opined in favour of the death penalty. Haeckel correlated it with Natural Selection. Ferri spoke of it as social selection. Garofalo is stern about it. Lombroso is not so ardent about it but supports it.

The opposition has also eminent men to count. Jesus Christ repudiated all sense of vengeance. He would have all sinners including criminals reformed rather than annihilated. He believed in human fallibility as much as in the possibility of reformation. He would leave them rather to be dealt with by God in His turn. An abuse of this form of punishment in England from the 16th. to close of the 18th. centuries led to a reaction.

During the reign of Henry VIII, as many as 72,000 persons were reported to have been executed. Close upon 200 crimes were punishable with death even towards the close of the 18th. century.

The law in England in these times stood for terror, and for very little else. Judges also could not suffer themselves to be defeated on this score. As if the sentence of death by itself were not hard enough, the judges often harrangued solemnly bringing the horror home to the condemned man. "Prisoner at the Bar," said Lord Eskgrove once tragi-comically, "not only did you murder your victim, whereby he was bereft of his life, but you did add to your crime by thrusting and projecting, or pushing or propelling or piercing the lethal weapon through the belly-band of his regimental breeches, which breeches were property of His Majesty, the King."

The following is a picturesque attempt by a court in New Mexico and can hardly be equalled by anybody less gifted than perhaps Macaulay :

Jose Maria Martin, stand up ! Jose Maria Martin, you have been indicted, tried and convicted by a jury of your countrymen of the crime of murder, and the court is now about to pass upon you the dread sentence of the law. As a usual thing, Jose Maria Martin, it is a painful duty for the Judge of a court of justice to pronounce upon a human being, the sentence of death. There is something horrible about it, and the mind of the court naturally revolts from the performance of such a duty. Happily, however, your case is relieved of all such unpleasant features and the Court takes possible delight in sentencing you to death.

You are a young man, Jose Maria Martin ; apparently of good physical condition and robust health. Ordinarily you might have looked forward to many years of life, and the Court has no doubt you have, and have expected to die at a ripe old age ; but you are about to be cut off in consequence of your own act. Jose Maria Martin, it is now the springtime, in a little while the grass will be springing up green in these beautiful valleys, and on these broad meads and mountain sides, flowers will be blooming ; birds will be singing their sweet carols and nature will be putting on her most gorgeous and her most attractive robes, and life will be pleasant and man will want to stay, but none of this for you, Jose Maria Martin ; the flowers will not bloom for you, Jose Maria Martin ; the birds will not carol for you, Jose Maria Martin ; when these things come to gladden the senses of men you will be occupying a space about six by two beneath the sod, and the green grass and those beautiful flowers will be growing above your lowly head.

The sentence of the Court is that you be taken from this place to the county jail ; that you be there kept safely and securely confined, in the custody of the sheriff until the day appointed for your execution. (Be very careful, Mr. Sheriff, that he have no opportunity to escape and that you have him at the appointed place at the appointed time), that you be so kept, Jose Maria Martin, until— (Mr. Clerk, on what day of the month does Friday, about two weeks from this time come ? March twenty-second, your Honor). Very well,—until Friday, the twenty-second day of March, when you will be taken by the Sheriff from your place of confinment to some safe and convenient spot within the county, (That is, in your discretion, Mr. Sheriff, you are only confined to the limits of this county), and that you be there hanged by the neck until you are dead·and the Court was about to add, Jose Maria Martin, 'May God have mercy on your soul,' but the Court will not assume the responsibility of asking an All-wise Providence to do that which a jury of your peers has refused to do. The Lord could not have mercy on your soul ! However, if you affect any religious belief, or are connected with any religious organization, it might be well for you to send for your priest or your minister and get from him—well,—such consolation as you can ; but the Court advises you to place no reliance upon anything of that kind ! Mr. Sheriff, remove the prisoner.

Beccaria, Bentham, Romilly, Auckland and others tried their utmost to mitigate the horrors although judges themselves opposed many measures. The total abolition of the penalty looked an impossibility.

Nor did human ingenuity stop with simple annihilation of the offender. Methods varied and almost vied with one another in severity.

Wines listed 29 forms of capital punishment in his work, "Punishment and reformation." Hanging, beheading and burning were the most common forms. Crucifixion was in vogue and will be remembered as a cruel method for its association with the fate of Jesus Christ. A Persian king, Sefi II, devised a new way of piercing the body of the condemned man with wicks. Burning at the stake for heresy, witchcraft, parricide, was common during medieval ages. Boiling in heated oil was practised by some cruel kings. Sometimes the men were sewn up in sacks with venomous serpents and thrown into the river. A variation was provided by throwing them to lions, crocodiles and other ferocious animals. Dragging behind horses was in vogue in Germany while in China men were trampled under the feet of elephants.

Flaying dismemberment, precipitation from a height, breaking on a wheel, burying alive, starving, etc., were other methods of sending a condemned man to the other world. Stoning to death was allowed in Islam although there are not many cases on record of the infliction of it. It consisted in burying a man upto his waist in the sand and the crowd throwing stones at him till he was dead. "Pressing" was another cruel method which was in vogue in England till the 18th. century. This consisted in a horrible process. Judgment was pronounced as follows :

> That you be taken back to the prison whence you came, to a low dungeon into which no light can enter ; that you be laid on your back on the bare floor, with a cloth round loins, but elsewhere naked ; that there be set upon your body a weight of iron as great as you can bear ……and greater ; that you have no substance, save, on the first day, three morsels of the coarsest bread, on the second day three draughts of stagnant water from the pool nearest to the prison door, on third day again three morsels of bread and such water alternately from day to day until you die.

The last case on record of this cruel practice being carried out occurred at the Cambridge Assizes in 1741.

Impaling the criminal upon a sharp stick was a common custom in Assyria. It was also used in Persia. Darius is said to have impaled three thousand Babylonians. Impaling was in use among the Romans. Strangling, smothering and other methods have been used in different countries.

After the invention of gunpowder shooting became a common method and is still retained as one for military executions. In some places it also serves the purpose of common executions.

Hanging is one of the present day methods although it has a pretty long history. It was practised in ancient Israel as a mark of indignity upon the lifeless forms of criminals. It has been of wide use over the world since.

'In this method of execution the victim stands or sits upon a trap door in a scaffold built up ten or twelve feet from the ground. A noose formed by the lower end of a rope attached to a cross-beam above his head is placed about his neck. A black cap is pulled down entirely over his face and fastened around the neck. At a given signal from the officer upon the platform the executioner, usually stationed at some distance, pulls a rope which realeases the trap and allows the victim to fall through the scaffold for several feet. The fall usually breaks the neck and causes instant death. Occasionally, however, the neck is not broken and then death occurs by strangulation. Once in a while the rope breaks and the victim must be taken back to the scaffold and the process repeated. Because of the slow death by strangulation and the occasional breaking of the rope, this method of execution is being supplanted by electrocution and other more certain and supposedly less painful methods.'

Of these, shooting, electrocution, gassing are comparatively quicker and perhaps less painful.

In indicating extent, I must recall what I have already said about the extensive use of the death penalty in England between the 16th and the

18th. centuries. As many as 72000 persons were said to have been executed during the reign of Henry VIII. As late as 1718 over 200 offences were punishable with death.

In the United States of America, the tendency has been to reduce the number of capital crimes steadily. That the sentiment of the juries is definitely against capital punishment is indicated by the fact that from 1911 to 1917 inclusive there was an average of only one hundred executions in the whole of the Uuited States per year.

The Indian Penal Code, as I have said elsewhere, has been draconian in severity as regards punishment. The death sentence has been prescribed by the Code for five principal offences, namely :

1. Treason ; abetment of mutiny.
2. Perjury resulting in conviction and death of innocent person. Murder.
3. Abetment of suicide of minor or insane person.
4. Attempted murder by a transported convict.
5. Dacoity with murder.

I have criticized the provisions of the Code elsewhere. The death sentence is awarded in some cases and persons are executed although the sentiment of the jury in India is also definitely against a sentence of death.

In modern times the wisdom and justice of the death penalty has been hotly debated and India has shared in the controversy to some extent. Public opinion is time and again ventilated through the press and by representatives in the legislatures in favour of abolishing or mitigating this horrible punishment. Let us consider the points in passing here.

The arguments in favour of retaining this form of punishment are :

1. It is the only way of eliminating the hopeless enemies of society. In other cases of punishment the criminal comes back to society to resume his nefarious activities. Why should society support him with the constant menace of his release and subsequent depredations ?

This argument is, however, easily assailable. After all, how can society in the present conditions of its knowledge ascertain who is going to revert to crime and who is not ? If we could know that a criminal is absolutely incorrigible this argument would have had force. But not now. The murderer by passion is less likely to repeat his crime than the thief. As a matter of fact, except professional murderers who are negligibly few, murderers, if spared, would really not commit the same crime again.

2. It deters as no other form of punishment does.

This argument looks formidable enough in view of the fact that life is considered by living animals as the dearest possession. In all other cases the criminal can look forward to a time when he will be back to his hearth and home and in many cases he may even count upon escapades or remissions. Garofalo stresses the deterrence of capital punishment and prescribes it for the typical criminal who, according to him, will never come back to ways of rectitude.

This argument has also been assailed by the opponents. During the ages of cruelty in England when people were hanged publicly with a view to deterring the common populace, criminals are said to have rushed at corpses to get certain bones which they believed would open any door. Pickpockets used to filch from the crowd at every hanging, although this was itself a capital offence. John Price, himself a hangman, was executed for murder of Elizabeth White. His successor, William Marvel, was transported for stealing ten silk handkerchiefs.

As a matter of fact, if criminals went by coolly calculating consequences in every case, they would be most dismayed at the prospect of death entailing their activities. In some cases they do and in many they do not. When driven by emotions, they will either not think of the consequences at all or if they do, they will little care for these. This is borne out by the bare fact that perhaps more suicides are being committed than murders everywhere and when people do resolve to take away their lives they think in terms of sure death whereas death following upon a conviction is always problematic. If the prospect of sure death is not deterrent to those who are emotionally disturbed how will an uncertain death ever deter so much ? Besides, superstition makes a hero of assassins and many of the criminals look upon death with courage and make light of it through vanity.

Other arguments are more or less repetitions of these main two and will fare only equally. The invoking of the sanctity of custom or of the sanction of religion has little validity inasmuch as religions reflect the thought of the ages in which they rise. There are many things in religion which we have ignored and are steadily ignoring.

The arguments advanced by the opposition are more sound and should commend themselves to the future generation of citizens.

1. It is an irrevocable penalty. This is the strongest argument. After all, we have by no means perfected our machinery of justice so that we may count upon court pronouncements as infallible. Unbalanced persons will often confess themselves guilty of crime of which they are innocent. Tight evidence manufactured by an overzealous party or agency may secure conviction of an innocent person in the present conditions. Lord Shaw says, telling of a story of a judicial murder within his own experience, "Every human judgment is mingled with human error, and in the issue of life and death no judge should be charged with an irrevocable doom". There are instances of innocent men being condemned, although few. Adam relates some remarkable cases of the kind. A man was once convicted of murder and condemned to imprisonment for life and when transferred to a certain jail he met with the man for murdering whom he was condemned serving as the sentry there ! The case of Adolf Beck is also to the point. He was sentenced to penal servitude on the evidence of 15 independent eye-witnesses including that of a handwriting expert. He was subsequently found to be innocent, set free, and compensated. Another instance of the unjust conviction of a man for murder is supplied by

that of Andrew Toth, who served twenty years of a life sentence in Pennsylvania for a crime which he had not committed. It may be argued that a certain amount of harm will be caused in cases where other forms of punishments are inflicted on innocent men also and this is only incidental to the fallibility of human judgment itself. In other cases, however, there remains room for redress and even compensating the sufferer whereas in case of death nothing can be done to the actual man so ill-condemned.

Bound up with this is the fact that after a person is executed, there is no incentive on the part of any one to hunt up evidence which might establish his posthumous innocence or the guilt of others. A tongue is eternally silenced. It could itself have given further clues to a crime.

2. It is retributive in nature.

This motive in the treatment of the criminal has lost much of its power in reflective minds and should completely vanish. It is unworthy of civilized men to go by it any more. Undoubtedly the person condemned can have no chance of reformation as he goes for good. It may be conceivable that capital punishment may be viewed by society as a whole as a means of protecting itself by eliminating its enemies. This contention we have already examined and found not wholly valid inasmuch as the criminals usually executed at present are not necessarily habitual criminals. Death certainly prevents reformation altogether so far as the individual criminal is concerned. As I have said already, the very nature of punishment in the original sense was the instinctive reaction to injury. If a man had taken the life of the assassinator of his father or relation as an instinctive reaction to the crime, nobody would have much to say. But when society has taken the matter out of his hands only to deliberate fully over the matter and devise the best way in which the criminal should be dealt with both in relation to himself and to the society at large, there should be little justification in taking a life away and foreclose door of any possible reformation.

3. The barbarity of capital punishment has a demoralizing effect upon society. It violates our humanitarian sentiments. Beccaria observed, "Is it not absurd that the laws which detect and punish homicide should in order to prevent murder publicly commit murder themselves ?" The idea is that law should not increase the ferocity of mankind by examples of barbarity. Death penalty is a relic of the old times when people thought in terms of elimination rather than refor-

mation or prevention. Men can take life in self-defence or in the heat of passion and have a relieving sense of justification, but they cannot take life in cold blood without violating the humanitarian sentiments which have taken thousands of years in development. Death penalty thus consists in the most cold-blooded and deliberate kind of murder.

These are the main arguments for and against the death penalty and all others can be derived from these main ones. It would seem that there are better reasons for doing away with this cruel method than for retaining it. Besides, there are other considerations which should turn the scale in favour of the oppositionists. Among these are :

1. Social conditions have greatly changed since the time when this form of punishment was considered absolutely indispensable. Police protection has become much more efficient and investigation both in method and thoroughness has advanced a great deal. Criminals are now pursued much more relentlessly and probably more effectively than before.

2. It is now possible to choose from a greater variety of penalties and apply the most suited to the individual concerned. It is not

necessarily the same punishment that deters all criminals. As we have seen superstition sometimes makes a hero of the assassins and vanity may induce people to get notoriety by giving life away. Besides, as Mr. Davitt puts it, 'the really hardened criminal will scarcely commit murder'.

3. So far as protection from ravages of these criminals, if spared, goes, it is now within the bounds of possible attainment to segregate them so that they cannot do any more injury.

4. At present the death penalty is very uncertain because it is difficult to have juries return verdicts of guilty in cases where they know capital sentence will follow. If this is only partially true, as it is undoubtedly so to a great extent, it means that criminals could be more effectively dealt with under any other punishment than this.

5. In inflicting this extreme penalty, society deprives innocent members of their main prop in many cases. This is undoubtedly a great problem inasmuch as the family of a man either detained or executed does suffer terribly. In the case of death, however, a prop and support is permanently done away with.

Modern opinion connives at capital punishment only not knowing what would happen if it was abolished. Such a sense of alarm is only natural as is illustrated by the anxiety of every people on the eve of introducing more humane methods of punishment. It would be most interesting to see how only after ten years after the last case of "pressing", and at a period when women were burnt for coining and convicted traitors were disembowelled, Henry Fielding informed a grand jury of Middlesex that 'the English Penal Code was the mildest and most devoid of terror of any in the world'. Even the Judges have shared the hardened mentality of the ages. Apropos of a proposal in 1810 to abolish capital punishment for stealing five shilling worth of goods from a shop, the Chief Justice of England, Ellenborough, actually declared, "I am convinced with the rest of the Judges that public expediency requires there should be no remission of the *terror* denounced against this description of offenders". He added further, "Your Lordships will pause before you assent to a measure pregnant with danger to the security of property........ My Lords, if we suffer this Bill to pass, we shall not know where we stand; whether we stand upon our heads or upon our feet".

This was only characteristic of the age as much as is the present sense of alarm as to what *will* happen characteristic of a mentality traditionally acquired. It may be disputed although it has been argued, that in all those countries where the extreme penalty has been abolished a decrease in murders has been noticed. Possibly this result is due to other factors as well, such as growth of culture, a higher standard of life and better police organization but it has certainly belied fears of those who had visualized an orgy of murders as the inevitable consequence of the abolition of the death penalty. A number of countries have abolished it and do not seem to have been any worse off. It is not known that any country has had to go back to the old system after having once abolished it. I have confidence in that other countries following these will also fare as well. As the Archbishop of New York has so nicely put it, the effect of the State so respecting life as to refuse to take it would undoubtedly be greater than the effects of its so condemning murder as to take the life of the murderer. The reaction of the individual to the behaviour of the community as a whole is so largely imitative rather than argumentative, that the effect of the State taking life tends to lower the general conception of the sanctity of life.

Sec. 2. Corporal Punishment.

Torture stopping short of death went by the name of corporal punishment. It frequently resulted in mutilation while mutilation was also expressly provided by certain codes. "An eye for an eye, and tooth for a tooth" necessarily meant mutilation. The idea also persisted in Islam. People concluded by a sort of crude logic that it was in the fitness of things that the offending limb itself should be punished directly. It was further believed that this would also serve as a good preventive on account of the visible stigma on the person of the offender himself. Cutting of hands was allowed in Islam as a penalty for stealing.

Manu also ordained likewise. The punishment for the different crimes was usually inflicted on the organ concerned as if the organ itself had offended directly. "Manu, son of the self-existent, has named ten places of punishment, which are appropriated to the three lower classes; but a Brahmin must depart from the realm unhurt in any one of them....The part of generation, the belly, the tongue, the two feet, the eye, the nose, both ears, the property, and in a capital case, the whole body". (Gour). These utterances betray both the prevailing practice of the times and the preferential treatment Brahmins received in Manu's hands.

In practice. however, the custom in many crude forms persisted till almost the other day. Fielding in the 18th. century, defended the established custom of nailing a man's ears to the pillory. Flogging was common and almost unlimited in extent. As a matter of fact, 'there must have been as many appliances for lashing the unfortunate human body as there were cutting weapons to make holes or stabs in it.'

A volume of authoritative opinion grew up against infliction of this form of punishment. Dr Barnes opined, "I never knew a convict benefitted by flagellation. The beaten man becomes a more desperate character." Dostoevsky observed, "It is a thorough misunderstanding of the nature of the criminal to believe that the fear of intense physical pain would prevent an outbreak of his malice or passion." Aschaffenburg refers to its brutalizing effect on all concerned.

Corporal punishment was not provided for in the Indian Penal Code. The drawbacks of such punishment are many. The suffering it produces is momentary, and it varies with the caprice or desire of the executioner. It produces extremely unequal results. In some cases it is but trifling in its effect whereas in some other, it is out of all proportion to its severity. A respectable man for example, would prefer death to it. It is, again, a sentence which is irrevocable.

Whipping as a punishment has, however, been restored by subsequent Acts. The Whipping Act of 1909 consolidates and amends the law relating to the punishment of whipping. It lays down that the punishment of whipping should be considered as one of the punishments laid down in the India Penal Code. It provides that whipping may be inflicted on certain offenders, such as, thieves, in lieu of any other punishment provided by that Code. It further provides that in certain other cases, such as, rape, etc., this punishment can be inflicted in lieu of or in addition to the prescribed punishment. Finally, it provides for whipping juvenile offenders who abet, commit, or attempt to commit the great majority of offences.

Sec. 3. Penal Transportation.

From time immemorial banishment of offenders has been a common practice. In the nations of antiquity banishment of political opponents was frequent. The Greeks and the Romans practised banishment to a great extent. The system had its origin in outlawry and ex-communication.

Transportation as a modern method of punishment, however, had its origin in England. The discoveries of vast areas of almost uninhabited land furnished good facilities for this form of banishment. During the 15th and the 16th centuries, conditions in England were marked by profound economic changes, especially by the enormous growth of commerce. Social and political changes were none the less enormous. Population grew and the break-down of old religious restraints upon conduct became noticeable. All these conditions swelled the number of criminals so greatly that the old jails became totally inadequate. Just at this time new colonies greatly demanded labour. At first it became customary to transport convicts to colonies. This naturally led to protest and penal colonies were established in regions as yet uncolonized. England established such colonies in Australia and Tasmania and other countries elsewhere.

Like any other form of punishment, transportation in England had its adherents and opponents. Some of the arguments in favour of this form of punishment were : the possibility of utilizing labour of the convicts ; the riddance of the toublesome elements ; and the availability of fresh chances to these convicts to make a new start in life. The opponents, however, argued that transportation failed as a reformative agency as large numbers were being sent to a country where they could not be absorbed into the general population but had to be kept in segregated camps under severe penal discipline ; that abuses incident to transportation were terrible enough owing to insufficiency of considerate supervising authorities and the terrible floggings and other severe punishments that were being actually meted out to these convicts ; that the increasing number of free settlers came to fear dominance by the worst elements of society ; and that it was impossible to build out of convicts a commonwealth worth the name. One writer spoke of transportation as an offence against the national conscience and expressed himself thus :

A colony founded and maintained on principles which, if acted by an individual in private life, would expose him to the charge either of insanity or of shameless profligacy. Imagine the case of a household most carefully made up of picked specimens from all the idle, mischievous, and notoriously bad characters in the country! Surely the man who should be mad or wicked enough to bring together this monstrous family, and to keep up its numbers and character by continual fresh supplies, would be scouted from the society he so outraged,......would be denounced as the author of a diabolical nuisance to his neighbourhood and his country, and would be proclaimed infamous for setting at nought all morality and decency. What is it better, that, instead of a household, it is a whole people we have so brought together, and are so keeping up?......that it is the wide society of the whole world and not of a single country, against which the nuisance is commited? (Gillin)

The framers of the Indian Penal Code, however, chose to retain this mode of punishment as they persuaded themselves that it was regarded by the natives of India, particularly by those who lived at a distance from the sea, with peculiar fear. The terror which it produced was supposed to produce good. The feeling of separation was laid great stress on and the law commissoners accordingly observed that this feeling would be greatly weakened if transported convicts should frequently return, after an exile of seven or fourteen years, to the scene of their offences, and to the society of their former friends.' This opinion has not, however, been respected as the law now allows transportation for seven or more years, in which case transported criminals do return to scenes of their early lives. The sentence of transportion figures more largely than that of death. It has been laid down as the maximum punishment in a great number of offences.

The history of the Indian penal settlement is both instructive and interesting. The first settlement was located at Bancoolen in Sumatra in 1787. Sumatra is an island of the Malay Archipelago and the settlement here was contemporaneous with that of English convicts in Australia. The main objective was utilization of the labour of the convicts for the cultivation of various products.

"The object of the punishment, as far as it affects the parties,". reported Sir Stamford Raffles in 1888, thus describing the state of the settlement very truthfully, "must be the reclaiming them from their bad habits, but I much question whether the practice hitherto pursued has been productive of that effect. This I apprehend to be in a great measure in consequence of sufficient discrimination and encouragement not having been shown in favour of those most inclined to amendment and perhaps to the want of a discretionary power in the chief authority to remit a portion of the punishment and disgrace which is the common lot of all. It frequently happens that men of notoriously bad conduct are liberated at the expiration of a limited period of transportation whilst others whose general conduct is perhaps unexceptional are doomed to servitude till the end of their lives. So coercive measures are not likely to be attended with success. I conceive the same advantage will arise from affording inducements to good conduct by holding out the prospect of becoming useful members of the society and freeing themselves from the disabilities under which they labour. There are at present about five hundred of these unfortunates. However just the original sentences may have been, the crimes and characters of so numerous a body must necessarily be very unequal and it is desirable that some discrimination should be exerted in favour of those who show the disposition to redeem their characters." (Pillai)

He proposed a number of reforms which were far in advance of the ideas of those days. In 1823 the settlement was removed to Penang as Bancoolen passed into the hands of the Dutch. Conditions here were not adapted to benefit the convicts so much at first but later general Man, (resident at Penang from 1862 to 1867), carried out certain desirable improvements. In 1865, the settlement was removed to the Andaman Islands. These islands are situated in the Bay of Bengal and are six hundred miles long and twenty miles broad. The settlement remains here till to-day.

With the exception of a small trading community, the population comprises of released convicts, their families and officers and men to look after the settlement. Conditions in this settlement are only moderately severe and have been steadily improved with an eye to the ultimate welfare of the people committed there. In view of the very nature of transportation as a method of punishment, experts call this penal colony the one that has been moderately successfully maintained for nearly a century. Public opinion, especially of the congress group, has disputed the wholesomeness of conditions in the settlement and only last year (1937) there was some agitation in favour of the repatriation of political prisoners.

The substitute for transportation in india is known by the name of penal servitude. It is applicable to Europeans and Americans. It was thought expedient to substitute this form of punishment by reason of the difficulty of providing a place to which Europeans or Americans could, with safety to their health, be sent for the purpose of undergoing sentences of transportation or of imprisonment for long terms. Penal servitude is a punishment which consists in keeping an offender in confinement and compelling him to labour.

Sec. 4. Forfeiture of property and fine.

We shall take up these two forms of punishment together because they are so allied. The forfeiture of property is also an ancient custom. It represented in some degree the cupidity of the rulers or the ruling class but mostly the accentuated wrath or sense of vengeance as against the offender. Not only should the man die or otherwise suffer but he must leave no trace of himself ! It resembles the wrath of Moses when he ordained the transgressors on a certain occasion to be killed, burnt and their ash drunk in !

Blackstone advances what he calls a substantial ground in justification of this form of punishment by contending 'that all property is derived from society, being one of those civil rights which are conferred upon individuals, in exchange for the degree of natural freedom, which every man must sacrifice when "he enters into social communities'. The theory of an original social contract has since fallen into discredit and the contention does not hold much good.

The draftsmen of the Indian Penal Code in retaining forfeiture of property as a form of punishment observed :

> The forfeiture of property is a punishment which we propose to inflict only on persons guilty of high political

offences. The territorial possessions of such persons often enable them to disturb the public peace, and to make head against the government ; and it seems reasonable that they should be deprived of so dangerous a power.

The penalty of fine originated with the evolution of valuable property and of the composition of offences by satisfying the injured party by making payments. In the Anglo-Saxon law the offender was allowed to compound his crime by the payment of *bot* or *wergild*. The idea of restitution in penal treatment was borrowed from the practice of payment of damages in civil law.

It has been held by one that 'a fine is the lost liberal, most divisible, most economical, completely remissible and therefore the most efficacious punishment.' The framers of the Indian Penal Code observed :

> Fine is one of the most common punishments in every part of the world, and it is a punishment the advantages of which are so great and obvious, that we propose to authorize the Courts to inflict it in every case, except where forfeiture of all property is necessarily part of the punishment. Yet the punishment of fine is open to some objections. Death, imprisonment, transportation, banishment, solitude, compelled labour, are not, indeed, equally disagreeable to all men. But they are so disagreeable to all men that the legislature in assigning these puni-

shments to offences, may safely neglect the differences produced by temperament and situation: with fine the case is different. In imposing a fine, it is always necessary to have as much regard to the pecuniary circumstances of the offender as to the character and magnitude of the offence. The mulct which is ruinous to a labourer is easily borne by a tradesman, and is absolutely unfelt by a rich zamindar.

Bentham in his Principles of Penal Laws proclaims the merits of fine as a punishment in its convertibility to profit, adjustability to the means of the offender, its not being unduly infamous, its remissibility in cases of an unjust award and its popularity. Some of these, however, are not unmixed beauties. Its convertibility, for example, may result in its abuse, as in ancient times, the property of subjects was a lure to many greedy monarchs. The true disadvantages did not escape Bentham's notice for he mentions how a fine hits the family and dependants and how it is not examplary. Its inappropriateness on serious crime is an additional demerit.

On the amount of fine that should be inflicted, the points that should be borne in mind are four, viz., the profit of the offence, if any; the value of the thing which is the subject-matter of the offence; the amount of the injury and the circumstances of the offender.

The provision of fine in the Indian Penal Code has been free and wide. In many cases no limit was laid down and the matter was left entirely to the judge.

Closely allied to the two described here, the loss of civil rights is a penalty of some fitness. It also has its origin in outlawry and ex-communication. People who grossly violate social canons of good citizenship, should not be allowed to have any influence on public affairs.

Sec. 5. Other forms of punishment.

Certain other forms of punishment may be disposed of here before we take up discussion of imprisonment which will demand lengthy treatment.

Punishment by shame has been of some use in the past. In a sense, however, such punishments as involving bodily pain or mutilation when done publicly served the purpose of punishing offenders by shame also.

Social degradation goes along with the above. Cutting of the ear is popularly advocated in Bengal to mark off the thief. Branding on the left cheek was provided in England by a statute in 1698 and had to be repealed after eight years of trial. It is immensely unsuited as a preventive and does on the contrary disable the offenders in honest earning of a living.

Poetic penalties took the form of providing punishments in a direct fashion. The ancient law of retaliation was supposed to attain poetic justice. Variations of the idea are to be found when an offender comitting a rape is emasculated, or a scold gagged as he was by a metal gag called the scold's or gossip's bridle.

We shall now take up discussion of the most important form, viz., imprisonment, in a separate chapter.

CHAPTER XVI

THE INSTITUTION OF IMPRISONMENT

Sec. I. Origin and growth—Developments—Past conditions—Indian Jails—Merits and demerits of the system.

Imprisonment for the purpose of detention has been long in use. We read of it in the Bible and other ancient literature. It did not make much of an appeal as a method of penal treatment itself as people formerly thought of summary methods. Thus imprisonment as a method of punishment was almost never used in Greece; neither was it so used in the Roman Republic; it was almost unknown in France in the later Middle Ages. In England imprisonment was used in a few cases in the Anglo-Saxon period but it was in the reign of Edward I in the last half of the 13th. century that it came into freer use although in most cases it served as a "squeezer" or means of securing fines. The early church authorities also developed imprisonment and it was most extensively used during the Inquisition. Imprisonment in the galleys, places of confinement of criminals where forced labour was resorted to, flourished from the 16th to the 18th centuries. Houses of Correction were established for the poor, the beggars, the prostitutes and the vagabonds. The justices were ordered to search out 'rogues, vagabonds and idle persons' and commit them to the institutions.

Imprisonment as a regular penal institution grew out of the local jails or prisons in England which were intended to detain people waiting to undergo such punishments as whipping, pillory, or execution. The prisons were dustbins of demoralization in which were huddled together all sorts of human wreckage. They were germladen and death and disease were the usual fates of the inmates. The corrupt wardens and keepers made their most in various ways and fleeced the inmates white.

The British national prisons were the outgrowth of three movements, viz., the revelations by Howard of the besetting evils in the old local prisons ; the stopping of transportation to the colonies ; and the failure of transportation to Australia.

Howard, the great prison reformer of England, personally investigated the abuses to which attention was drawn by various persons, committees and societies onward from the middle of the sixteenth century. His work, "State of Prisons in England," contains a mass of concrete details concerning the then existing prisons. This book had a profound influence on the public and the administration. He was complemented by several other workers and particularly by Mrs. Elizabeth Fry. Several societies for prison reform came into being and conditions were greatly improved. So much so that a section of the people began lamenting the all too eassy conditions of jail-life.

In India jails at the comencement of the 19th century were far from satisfactory. Discipline was lax, housing conditions were totally insanitary and the officers looking after them were corrupt. The rich prisoners used to go their own way. Forbidden articles of use were allowed to be kept by those who could pay for the privilege. Disease and death were the most frequent visitors.

Dr. J. Mouat, Inspector-General of prisons made a special tour in 1856 to the various jails in Bengal, Bihar, Orissa, Arakan, etc., and found conditions in the jails anything but satisfactory. The prisoners were let loose to go out as they liked, arrangements for supply of provisions were unsatisfactory, those for segregating female prisoners from males unsafe, prison rules were flagrantly broken, opium and tobacco were smuggled in and consumed and judges and magistrates who visited these periodically did not bother themselves about the state of affairs prevailing. The death-rate was alarmingly high.

All these abuses detected were sought to be remedied by a Jail committee in 1864 (the second one, the first one having sat in 1836), but nothing tangible was done till 1889. After this year various reforms were carried out and most of the abuses cured. A system evolved in which subsidiary, district and central jails came to be better supervised. It became a matter of policy to concentrate prisoners in central jails for more efficient supervision.

The treatment of the convict came to be as follows :

On admission, the person of every prisoner is thoroughly searched and weighed ; then he takes his bath and receives a suit of jail attire. He has also got a history ticket giving an account of his career. His serial number is written on a wooden tab, hung round his neck by a ring of galvanised ironwire not removable over the head. The convict is classified according to his caste and food is distributed accordingly. Rations are weighed before and after cooking and it is the object of the authorities not to make the prisoner lose in weight while in prison. Strong meals are supplied twice every day, one in the morning and another in the evening. In the Coimbatore jail, prisoners are served some grain kanji at 6 O'clock; at 11 they receive a midday meal and from 12 A.M. to 5 P.M. they are at work. Their health is cared for and the medical officer examines them every week with a view to detect cases of skin diseases. As soon as any epidemic makes its appearance, the prisoners are removed as rapidly as possible into camp. Convicts sentenced to hard labour should have their hair removed with the exception of the shika of a Hindu. But the hair is allowed to grow a month before release. On Sunday mornings, a parade of convicts is held and complaints, if any, are received and enquired into. Alarm parades are held at intervals to secure discipline. (Pillai)

The daily routine thus portrayed still holds good in the main. As regards work, the lowest tasks are relegated to low class convicts. The others are taught a trade, the main occupations being agriculture, horticulture, coirmaking, oil pressing, grinding flour, etc. Punishments in the jail are meted out in the shape of fines, penal diet, fetters and flogging in cases of grave assault and serious disobedience. There is a system of grading and a healthy rivalry is stimulated so that reformation becomes expeditiously possible. Responsible positions are made attainable by good work.

These are happy developments and mark immense strides over what was there formerly. The recommendations of the Indian Jails Committee (1929-30) are still more liberal. An eminently laudable recommendation is that *every jail will have a full-time superintendent well-versed in the princpies of penology. Other subordinates shauld at least have an elementary knowledge of the science.* To provide due accommodation the maximum number to be assigned to each central jail should be lowered. The majority further opined that separate sleeping accommodation should be provided in order to check corrupting conversation, unnatural vice and other abuses. Work should be of a congenial type and those who have leisure should be provided with books that may help character. Among other recommendations were those for creation of children's courts ; separate accommodation for under-trial prisoners ; segregation of habituals ; provision of religious and moral instruction ; institution of the "Star" class system and abolition of certain kinds of degrading disciplinary practices ; adoption of the English system of release on license of adolescents ; separation of civil and criminal offenders, etc., etc. The Jail Committee noticed a general opinion that the Indian jails did not exercise a good and healthy influence on their inmates and as a whole the reformative side of the system was too little developed. The Committee's observations and recommendations ought to carry weight with all concerned. It had visited many prisons and industrial and reformatory schools in Great Britain, the United States, Japan, Philippine Islands and Hongkong. The report constituted a general survey of Indian prison administration after a lapse of many years and the recommendations embraced immediate and distant improvements that may possibly, and should desirably be carried into effect.

With the inauguration of Provincial Autonomy, the question of prison reforms has again come to the forefront. The United Provinces Government is reported to have reforms of a far-reaching character in view. They include introduction of Borstal Act and institution ; of the Probation system ; and other things. The Bengal Government have also carried out vast improvements and are contemplating more. They have their eyes on the various problems : short-term imprisonment ; accommodation ; classification ; jail staff ; jail industries ; jail education ; treatment of juveniles and after-care ; etc., etc.

Before we pass on to enlightened remedial institutions we shall touch briefly on the institution of imprisonment itself as a penal method. Since it developed as outlined above, it has been, like any human institution, extolled and decried widely. Among its merits have been urged :

1. It is a means of incapatiating criminals. If criminals are allowed to remain in society, they remain free to commit further mischief.

Crime within the jails is, however, fairly rife. It varies with the efficiency or otherwise of prison administration. Theft is committed in respect of prison property. Assaults are made on the prison guards and on other prisoners. Perverted sex practices flourish and unnatural crimes are often committed.

2. It deters the general public. The love of liberty of people outside jails holds on to them and they refain from doing anything that may forfeit it.

It certainly has some deterrent effect. This would naturally be enhanced by increasing the horrors of jail life but these, again, will affect reformation adversely and also violate humanitarian sentiments.

3. It is also reformative. By stopping irregular life to the vagrant and the criminal it affords time for healthy reflection. The prisoner thinks of ways of reform.

The opponents urge that the very reverse is the case, It embitters feelings against society and breeds unholy thoughts,

4. It is the only method by which vast numbers of criminals can be segregated from society and controlled. There is something in this contention. No other method is capable of affording possibility of such mass treatment. Transportation is only a variation of this system.

On the other hand, it has been declaimed by a multitude of people from all ranks. Among its demerits are :

1. Inmates are embittered against society. Among factors estranging them are the inevitability of physical deterioration owing to the cramped accommodation of most prisons ; the prison diet which is not and possibly cannot be as wholesome and nutritive as to affect the mental attitude favourably. What with the loss of liberty and what with the physical deterioration, many of the prisoners become nervously unstable. The making of money by those concerned by underfeeding men and saving money was a standing complaint in the past.

2. The prison confirms the criminal habit in the first offenders. John Howard who will be remembered in connection with prison-reforms expressed himself strongly thus :

If it were the wish and aim of magistrates to effect the destruction present and future of young delinquents, they could not devise a more effectual method than to confine them so long in our prisons, those seats and seminaries......of idleness and every vice.

3. Most prisons and reformatories are schools of vice. With the class of persons that generally inhabit them, most of whom have lived an irregular life outside, there is bound to be a great deal of immorality, even under the best conditions. Prison authorities are worried as to how to control vices flourishing within. Unnatural vice and the use of drugs are two besetting things of prison life. Parmelee has characterized the problem of sex as one of the most difficult problems of prison administration. Onanism, homosexuality, and other forms of sexual perversion flourish among both male and female prisoners, owing to the curbing of opportunities for sexual gratification in their adult stage of life. Not only is this feature so seldom referred to but a section of people become indignant at the mere mention of it. Part of this is due to prudishness and part to lack of understanding and appreciation of the true significance. Are we, they say, to provide these people with scope for sexual gratification also and thus put a premium on crime ? Well, the question is not so simple. It is undoubtedly a section of our own people that is there. One cannot obliterate a powerful instinct like that of sex by a simple frown. Over and above everything we must know that these people are due to come out in society and live in it. Would it then be to the good of society to turn them out with habits of vice thus acquired ?

Sutherland has collected some materials bearing on the attitude of prisoners themselves towards the prison. They tend to indicate the nature of the effect of prison life on the future of the inmates. Some of the opinions expressed are :

> In the fifteen years I spent in different prisons I found nothing on the official system which was of any benefit to me, nothing which tended to make me better, and to fit me to earn an honest livelihood.
>
> ... ...
>
> Prison obstructs or altogether closes every door to genuine moral reform in prisoners.
>
> ... ...
>
> There was nothing that could possibly be construed as reformatory or constructive in my prison experience ; nothing that would help one to meet the terrific problem of facing life later and earning a livelihood.—After what I have seen of the medieval methods of treating the prisoner, and since I know something of the difficulties of life after one has left prison, I wonder that the percentage (of recidivism) is not one hundred.

Gillin quotes Oscar Wilde who expresses himself thus :

> The vilest deeds, like poison weeds,
> Bloom well in prison-air :
> It is only what is good in Men
> That wastes and withers there ;
> Pale Anguish keeps the heavy gate
> And the Warder is Despair.

Each narrow cell in which we dwell
Is a foul and dark latrine,
And the fetid breath of living Death
Chokes up each grated screen,
And all, but Lust, is turned to dust
In humanity's machine.

The poet had some prison experience and thus his indictment though in poetic form carries some weight.

It would interest my readers to hear Pandit Jawharlal Nehru on this topic. He says in his Autobiography :

> Despite all these advantages that I had, gaol was gaol, and the oppresive atmosphere of the place was sometimes almost unbearable. The very air of it was full of violence and meanness and graft and untruth ; there was either cringing or cursing. A person who was at all sensitive was in a continuous state of tension. Trivial occurrences would upset one. A piece of bad news in a letter, some item in the newspaper, would make one almost ill with anxiety or anger for a while. Outside there was always relief in action, and various interests and activities produced an equilibrium of the mind and body. In prison there was no outlet and one felt bottled up and repressed, and, inevitably, one took one-sided and rather distorted views of happenings. Illness in gaol was particularly destressing.

George Bernard Shaw expresses himself on the topic thus :

Imprisonment as it exists to-day is a worse crime than any of those committed by its victims; for no single criminal can be as powerful for evil, or as unrestrained in its exercise, as an organized nation....We have to find some form of torment which can give no sensual satisfaction to the tormentor, and which is hidden from public view. That is how imprisonment, being just such a torment, became the normal penalty. The fact that it may be worse for the criminal is not taken into account. The public is seeking its own salvation, not that of the lawbreaker. It would be far better for him to suffer in the public eye; for among the crowd of sightseers there might be a Victor Hugo or a Dickens, able and willing to make the sightseers think of what they are doing and ashamed of it. The prisoner has no such chance. He envies the unfortunate animals in the Zoo, watched daily by thousands of disinterested observers who never try to convert a tiger into a Quaker by solitary confinement, and would set up a resounding agitation in the papers if, even the most ferocious maneater were made to suffer what the most docile convict suffers. Not only has the convict no such protection: the secrecy of his prison makes it hard to convince that he is suffering at all.

What Pandit Nehru has said from personal experience and Bernard Shaw from sympathetic thinking will appear to be true from the thoughtful literature by some of the best minds. Mr. Tannenbaum's book, Wall Shadows, among many, reveals the sinister spirit of the old repressive penal administration and presents evidence to countenance the presentiment that we are entering an era characterized by the "coddling of prisoners."

Mr. Tannenbaum expresses himself strongly thus :

> The prison is a makeshift and an escape. It is not a solution. We would hide our sins behind its walled towers and barred windows—conceal them from ourselves. But the prison is an open grave. It returns what we would bury behind its gray walls. Its darkness and isolation only make the sins we would forget fester and grow, and return to stalk in our midst and plague us more painfully than ever. We would cover up our sins of omission—for that is what crime and criminals largely mean in the world—by adding sins of commission. That is imprisonment. Having failed to straighten the lives of criminals in childhood—to bring sweetness and light, understanding, comfort, and good-will when it was needed, we justify our negligence by scorning the spirits we have thwarted, by breaking the bodies we have bent.
>
> It is our attempt to escape accountability for the crimes we have committed against the men and women we call criminals. The prison is a reflex. It mirrors our hardness, our weakness, our stupidity, our selfishness, our vengeance, our brutality, our hate—everything but love and forgiveness ; everything but

our understanding and sympathy, everything but our intelligence and scientific knowledge.

With a set of warders little better than coolies and of officers hardly more enlightened than office clerks or accountants, one cannot hope for a state of decent behaviour and sympathy and bliss obtaining within.

4. A prison record bars the door to future opportunity. This is an unmitigated evil. When a man comes out of the prison, he finds himself shunned by nearly everybody but his own people. He carries a stigma and where there are no Aid Societies (there are very few in India) he is up against almost unsurmountable odds. He hardly gets employed and has ultimately to look to crime again for a living.

5. Imprisonment operates hard on families and dependants. It thus punishes in the same process the wicked and the innocent. This is a factor of which scarcely any mention has been made by any writer other than Parmelee. To my mind, this is a great social problem. I have depicted the plight of the family of the imprisoned man in the Introductory Chapter and I need only refer the reader back to it. We have seen how the actual criminals carry on their perilous job, often under pinch of the stomach, and when thrown on his resources to defend himself in the lengthy process of adjudication, goes ill-defended. This has brought the question of Public Defence to the forefront. The further problem takes the shape of

maintaining the dependants of the imprisoned man during the period of his incarceration. There is no reason why these innocent persons should suffer for the failing of another man. *I think society will eventually have to look for other methods of punishment than longterm imprisonment on this main among other grounds. Prisons and reformatories are thus a makeshift and will be continued only until society has devised better methods.*

I need hardly enumerate other evils mentioned by various other writers. I have touched upon the more prominent ones.

CHAPTER XVII

REVIEW OF PENAL METHODS

Review of the forms of punishment—Other methods of treating the criminal—Individualization.

In the last chapter I have surveyed the forms of punishment that have been in use over a large part of the world and for a period more or less long. I have also critically reviewed them. Some of them have been shown to carry a greater amount of evil than good. It must, however, be borne in mind that evils and imperfections are inevitable in all human institutions. As I have said so often, man began to act before he judged. Or, at any rate, he acted on whatever consideration he could give to a particular proposition, erring and correcting in the light of his experience except in certain cases where either dogma or superstition had foreclosed door of his speculation. It is for man, again, to review critically what has been done before and remedy shortcomings, wherever possible.

The evils of the forms of punishment outlined already have demanded mitigation. To take them in their order, I must say the death penalty should be abolished. It should give place to other forms of punishment to be yet retained, to be applied either singly or in combination. Some have suggested asexualization and life-long segregation as substitutes for capital punishment. The former has nothing to commend itself except that it looks like a "poetic" punishment. Sterilization which is a milder form has been advocated by some as a desirable penalty. The principal motive behind this view has been to prevent criminals from reproducing themselves. As we have seen, however, criminality *per se* cannot be inherited. It is hardly justifiable, again, to use a form of mutilation as a punishment. Sterilization as a means of social hygiene in cases of individuals likely to endanger future offsprings by transmitting dangerous hereditary traits is permissible and falls in the province of Eugenics.

It is likely that the death penalty will come to be discarded as it should be in at least all democratic countries. A start should be made by abandoning the mandatory death penalty in India and leaving the imposition of the sentence to the discretion of the court, subject as at present to the confirmation of the High Court. No good reason exists for insisting on any particular form of punishment as its sole substitute. Those convicted of capital offences should be treated on the same principle as other criminals, namely, the individualization of the offender. This may mean transportation for life, life imprisonment, but not certainly as a matter of necessity.

The case for corporal punishment has been examined at length already. It was discarded as a means of punishment by the original draftsmen of the Indian Penal Code. It is certainly derogatory and does in many cases do harm out of all proportion. A respectable man would prefer death to such dishonour. The punishment is a relic of the old form of torture. Tortures in various forms have been totally discarded except whipping in favour of retaining which there is a volume of public opinion. The Whipping Act of 1909 has provided this for certain offences of a trivial nature such as theft, house-trespass, etc., as an alternative punishment, presumably in order to dispose of the offenders expeditiously and summarily. In some grave offences, such as rape, etc., it is usually inflicted in addition to other penalties. The idea is that the man who cruelly inflicts pain on another should be made to feel what it is like. This contention does not seem to be very sound as there is no reason why it should not be prescribed in cases of hurt, etc., where its applicability on this ground is the best. It has been prescribed as a punishmeet for juvenile offenders in yet another sense, namely, that it be taken lightly more or less as a form of corrective as in school discipline. I should think the use of this penalty should be limited to the very few in any case.

Mr. Edward Cadogan, Chairman of the Departmental Committee on Corporal Punishment, which issued its unanimous report lately, spoke on the topic at a luncheon of the Howard League for Penal Reform at the Comedy Restaurant.

> "We were determined not to be influenced by sentimentalism of one kind or another," he said. "We went thoroughly into facts and figures and based our report on them. We disposed of certain popular legends about flogging having brought to an end certain outbreaks of crime, finding that in each case the claim proved to be entirely unjustified."

The Committe had addressed itself seriously to the argument that flogging acted as a deterrent in two ways : deterring a man from committing such an offence again, and discouraging others from committing it. This proved to be utterly fallacious. Reform was now the main factor in the treatment of a wrong-doer.

After examining a mass of facts and figures and comparing the subsequent records of 430 persons who had been flogged and of those not flogged, the Committe came to the conclusion that imprisonment without corporal punishment was not less deterrent than with flogging.

With the utmost reluctance the Committee had had to agree with the unanimous opinion of prison authorities, prisons doctors, and warders who gave evidence that flogging must be the ultimate sanction for certain types of prison offences.

Mr. Cadogan hoped that the Committee's labours would have some result and that a long overdue reform would be put into effect.

The method of transportation of criminals has still some advocates. As a matter of fact, it has not been totally abolished yet. Some would restrict it in only cases of political criminals The experiences of many countries have shown that it is a failure. It will always be opposed by inhabitants of a country selected for this purpose of penal colonization. In the case of an uninhabited country so selected, the emancipated convicts who may like to settle there will object to the influx of fresh criminals unless they are rigidly segregated. This, again, means only maintaining something like a prison house in a seperate land. With an association limited entirely to criminals, it is extremely unlikely that children will grow up in anything like a wholesome environment. In view of the various drawbacks, I should think society will have to make less and less use of it as a form of punishment.

The penalty of fine is much more frequently imposed than any other forms of penalty, single or combined. This is partly due to the fact that the great mass of relatively trivial offences are disposed of by fining the offenders. In the case of this form of penalty the legislature usually fixes either the maximum or the minimum limits or neither or both, the general principle understood being that fines shall not be excessive. It is also laid down that offenders be imprisoned in default of payment. I have already indicated the merits and demerits of fine as a method of punishment. The difficulty remains in that the fine will have to be adjusted to the condition of the offender. There is one point which commends itself to careful consideration. Fine, like rates and taxes, is liable in some cases to be shifted on to the shoulders of others. If a destitute criminal is fined, he may commit further crime to enable him to pay up the fine. A dishonest employee made to suffer pecuniary loss may be disposed to making up his loss by further dishonest means. On the whole, however, fine imposed with due discrimination will have to be retained as a method of punishment for the present.

Closely connected with this has been urged the desirability of restitution and reparation. Fines levied should not be looked upon as a short of incoming tax to fill the treasury. The injured party should be compensated for his loss by the victim through the state. For example, in the case of theft the thief should be forced to repay at least in part what he has stolen. Dr. Mercier lays special stress on this. Such reparation, he holds, has an excellant psychological and moral effect upon the offender. The thief or embezzler who put together a huge amount by dishonest means should not be allowed use of the ill-gotten money after his suffering whatever other punishment he may receive. Restitution secures justice for the victims of crime who at present can secure no material compensation without recourse to civil law. Garofalo and others advocate extreme measures such as attachment of the property of offenders at the time proceedings are started so that he can be compelled by order of the court to make restitution. If he is an insolvent he can be compelled by order of the court to devote a part of his income towards restitution.

These are extreme measures that may not suit conditions in India. In the first place, it is not in all cases that such restitution becomes either possible or needed. Offences against the person are best dealt with in other ways, although in some cases fine may be levied and a part of it paid to the injured party as compensation. In the second place, it is open to the injured party to sue the offender after his conviction in a criminal court civilly for damages. It is mainly for the reason that the vast majority of professional criminals are poor and destitute that the prospects of such suits are not ordinarily bright. I should think restitution can be accommodated in a system of fine properly adjusted.

Loss of civil and other rights has been advocated by some as a suitable punishment for certain infamous crimes. In the Roman Republic conviction of such crimes meant loss of the right to vote, to hold office, to represent another in the court, to be witness, to manage the affairs of onother, and the abridging of the right to marry. Subsequent loss of rights of citizenship also followed. The bills of attainder ordained during the feudal period that a person found guilty of treason or felony of a capital kind should be declared attainted, i. e. his lands were forfeited, and no one could inherit land from or through him. Attainders were formally abolished in 1870. They were also prohibited by the constitution of the United States.

Forms of the loss of rights may, nevertheless, be met with ordinarily. A pleader who has embezzled the funds of a client or otherwise misbehaved may be debared and prevented from appearing as a lawyer. A doctor, again, who has been found guilty of gross professional misconduct may be debarred from practising medicine. The right to vote or to stand in an election may be forfeited in cases of gross malpractices in elections. Society will have to make use of this form of punishment in a limited number of cases. The right to propagate is denied by a process of sterilization but this is rarely, if ever, done in the case of criminals. As many as twenty-eight states of America have passed law providing for sterilization but only in cases of defectives to protect against defective offsprings coming into the world.

Remonstrance and admonition have, again, been advocated by some for freer use. Admonitions when administered by the court are likely to be effective in a good many cases of trivial or technical offenders. Courts are using this method more frequently now in America, probably because of the futility of short sentences in prison or jail. It was an established principle of Roman jurisprudence and a kind of judicial admonition known as '*Severa interlocute*' was in vogue. Gentle reproof was also recommended by Manu for first offenders. The Indian Jails Committee recommended that a finding of 'convicted and discharged' should be recognized in the Indian penal law. Justice Heaton of the Bombay High Court is said to have recommended the above course in some cases where 'the anxiety, publicity, inconvenience, expense and delay incidental to the trial are sufficient to deter the accused permanently from relapse.' I should think this course is eminently desirable in many trivial cases committed by persons otherwise responsible and respectectable.

We now come to the various progressive institutions devised for mitigating evils of imprisonment, the most widely used of all punishments. We have seen that prisons are corruptive, especially for first offenders and young offenders.

The first evil that comes to notice is the fact that undertrial prisoners, some of whom are innocent and many ultimately discharged, should be huddled together, or at any rate placed, in the same jail as convicted ones. This is a matter of great importance, especially in India where a large number of person were and still are arrested on suspicion during the stage of police investigation and detained till the cases are sifted and sent up for trial. Unfotunately in the past arrests were made indiscriminately liborally and in cases of heinous offences still more so by way of striking terror into the hearts of possible criminals. This antiquated idea is being discountenanced at present. The question will, however, remain open till Houses of Detention are separately maintained. Such houses are prisons only in the sense that persons are temporarily detained in them but they are by no means penal institutions. They should be sharply differentiated from the latter and be much more comfortable inasmuch as persons detained are in many cases not criminals but merely defendants in criminal cases with prospects of being declared innocent.

The need for detention before trial arises from the fact that the person charged with a crime should be available for trial after the police or other agency has sifted the case against him. In England and some other countries arrests by the police are put off for as long a period as is possible. Hasty arrests are deprecated. In India and perhaps France and Germany, the practice has been almost otherwise. We, here, are just discountenancing mass arrests for either demonstrative or preventive purposes. A man's liberty is as precious to him as to any other man and the utmost care should be taken to insure against unnecessary hardship being caused to anybody. A release on the wanted man's own recognizance or on bail with financial security for his return should be made possible in an increasingly more number of cases. It is a remarkable fact, however, that in India, wanted persons in even trivial cases freely abscond to the surprise of all concerned in bringing them to justice. To my mind, this complex has been due in some extent to the rough handling alleged on the part of the police and possibly the indignity of being locked up. With a state of affairs more in consonance with refined methods of treatment, people will be less scared than now in facing and answering charges.

There are, however, people to suggest that the case for there being hardships imposed at this stage of detention is not so very weak inasmuch as a large number of really guilty persons get off on account of technicalities of law. The people detained should therefore suffer at least this much of hardship as a deterrent to themselves and others. The difficulty is, however, that the innocent also suffer along with those and nobody should be so zealous as to advocate that people can be kept innocent by punishing the innocent. The method will, again. react badly as it has in India ; people will be so scared as to abscond during the period of enquiry so that in cases the police cannot send them up in charge-sheet, they will have avoided much hardship by simply hiding themselves for a few days.

We may sum up mitigating factors of the evils of the system of detention before trial. It is most likely to interest Indian people and the Administration.

1. The first and foremost thing to do is to reduce the number of arrests. It has been a standing reproach that the police make arrests on a hit-or-miss basis and sometimes or always put forward the excuse that this will have a salutary effect in the minds of the criminals. No such excuse is valid. As I shall indicate in the proper place, investiagation should be looked upon as the preliminary step of rendering criminal justice and should not be confused in any alarmist frame of mind with any other direct preventive methods. The evil in so far as is due to the frailty of all

human institutions can be excused but there is no reason why every excess should not be strictly checked. Sutherland states that 60 per cent. of the arrests in certain cities in the United States result without prosecution and in addition, between a third and a half of the persons who are prosecuted are discharged without conviction. He states :

> The police constantly break the laws. The laws of arrest are rigidly limited, but the police exercise their authority with little reference to these limitations and in violation of law. Hopkins refers to illegal arrests as kidnapings, and in this sense the number of kidnapings by the police is thousands of times as great as the number of kidnapings by burglars and robbers.

We have indicated that conditions in India were not very happy with regard to this evil but Government has now taken the matter up. Improvement in this direction has already been marked.

The summons may be substituted for arrest in many cases, as is done in the vast majority of cases arising out of violations of traffic regulations.

2. There should be a system of state indeminification for errors of criminal justice as there is in some European countries. Sutherland has argued the case for this at some length. When

the state deprives a person of his liberty for the sake of public welfare and when trial or enquiry shows that he was not at fault, the state should compensate for his loss of time and liberty. This should not be based on the principle of what is done in cases of exactly false accusations where heavy damages may be awarded but that of workmen's compensation laws : spread the loss on the public rather than impose it on the individual. If this course is adopted, the indemnification should be in cases of innocence only and limited against excesses. 'Aside from the remedy for loss that this would provide, it would be desirable because it would tend to prevent needless arrests, would tend to speed up the courts, and would tend to create a public opinion favourable to greater efficiency in police departments and courts in general.'

3. The dependants of those detained awaiting trial should be cared for by the state. This follows from the above considerations as a corrollary. This is a problem to which I drew attention in the Introductory Chapter and to which little attention is paid generally. We shall study this in more details elsewhere. In the case of political detenus, the principle has been accepted partially.

4. The Hajats and Houses of Detention should be improved. We have already discussed the need for this a short while ago. The principle has been partly conceded in classification of undertrial and convicted prisoners in various classes according to their status before detention.

5. The courts should dispose of cases more rapidly. The longer the period of detention, the greater is the suffering caused to all, particularly undeservedly to the innocent.

6. There should be increased awareness of society as to conditions obtaining in Hajats and Houses of Detention. 'The principal part of this publicity should be descriptions of the improved methods used in some communities, the reasons for the improvements, and the advantages which result.'

7. Increased use should be made of recognizance bonds and the system of bail. We have discussed them already. The difficulties of operating them need a mention, however brief.

The recognizance bonds in cases of destitutes are hardly any guarantees worth going by. Apart from that, however, the system is excellent. It fosters a sense of responsibility. The main objective is the availability of the accused for trial and not any actual financial gain to the state. In this view of the matter, I visualize a modified form of the system which could be used far widely and which would be free from blemishes from which the system of bail suffers. It is this, (incidentally I have not seen this suggested anywhere,) that apart from the bond threatening financial loss in case of evasion, it should entail imprisonment and other forms of punishment. This will be eminetly equitable for we have on the statute punishment for escaping from lawful custody, actual or constructive, already. Even an innocent man under custody cannot escape without penalty. The case is analogous for the person on such bonds is in virtual custody of the court. A slight additional penal clause could save us from any number of blemishes other systems involve.

The Bail system, although it is more stringent than the one of recognizace bonds suffers from the following disadvantages :

(a) The police and the courts have only inadequate facilities for determining whether financial security is needed, how much security is needed, and how adequate the security offered may be. The amount required is therefore generally determined by the charge against the defendant rather than by his character and responsibility. This bears heavily on the poor and makes bail practically prohibitive for them. A poor person of otherwise excellent character and responsibility charged with a crime has no honest alternative to detention. On the other hand, the courts continue to accept professional bondsmen of doubtful assets as sureties on bonds far in excess of their property. 'The financial security is good when the defendant is sufficiently honest and responsible so that no financial security is needed, and in other cases it is practically worthless.'

(b) The system has, in actual practice and in many cases, involved collusion between the police, the court staff, and the professional bondsmen. The Mukhtear and the pleader charge their fees to cover their risk and also share any extra they may require for silencing the court staff or the peshkar, important functionaries in making things smooth for all concerned. The story goes that the porfessional bondsmen, mostly Mukhtears here, will even wait for some time and allow credit to their clients to the extent of one or two dark periods ! For how else will the destitute thief or burglar produce money ? He starts with a liability and does very often recoup his purse by criminal exploits to deter him from which he was being hauled up! This is an extremely undesirable course which can be easily avoided by acting on the modified form of the system of recognizance bonds I have just suggested.

We have so far considered the cases of those who are detained before trial. The need for consideration arises out of the fact that at this stage criminals and noncriminals are mixed up and that it is an accepted principle of criminal justice that the innocent must not suffer. We cannot, however, remain content with sending even the really guilty persons to prison. There are classes and classes of men so condemned. The effect of prison life may be corrective in one case and extremely baneful in another. A number of problems come to the forefront in this connection.

The first question that crops up is in relation to the juvenile and youthful offenders. The case of the first offender also goes alongside that of these.

In the Chapter on Juvenile Criminality I have shown how imprisonment has been considered a factor in the *making* of juvenile criminality.

A century and half ago children were tried and treated much in the same fashion as adult criminals. The only exception was that a very low limit of age was laid down to exclude children from responsibility for crime.

The earliest attempt in Europe in the shape of starting a reformatory was by Pope Clement XI who, in 1704, founded the hospital of St. Michael at Rome. In this institution over the door of a hall set apart for boys was inscribed "For the correction and instruction of profligate youth, that they who when idle were injurious, may when taught, become useful to the State." It was only a juvenile reformatory in part, since orphan boys and the aged and the infirm also were looked after. A similar institution founded by Johannes Falk about 1813 in Weimar, Germany, also cared for the children of criminals and for delinquent children. This was in the form of an industrial school. Other institutions gradually grew up or were adapted.

In America a juvenile reformatory was established as early as 1824 in New York State so that children, after conviction, would not be confined with adult criminals. Since then the treatment of children attracted more and more public attention and the juvenile courts began to spring up. The movement developed rapidly after the Chicago court was authorized. By 1925 all except three states had passed necessary laws and the federal government had a juvenile court in the District of Columbia.

Most of the civilized countries now have specialized juvenile courts. The main charateristics of juvenile courts are separate hearings for children's cases ; informal or chancery procedure ; regular probation service, both for investigation and supervisory case ; detention separate from adults ; special court records and probation records, both legal and social ; provision for mental and physical examination, etc., etc.

Sutherland has quoted opinions both in favour of achievements of the system and against its efficacy and tried to appraise the case for the system by statistical methods. He states :

> When considered as a substitute for the criminal court, it is regarded as a decided success ; when considered in relation to what might conceivably be done, it appears to be a failure. Those who speak most frequently of the failure of the juvenile court would probably not prefer the old criminal court procedure. They are insisting that the juvenile court has failed in order that a still better substitute for the criminal court may be developed.

Sutherland suggests certain improvements which are eminently desirable.

The Borstal system on the model of which we have schools in India originated with the experiments of Sir Evelyn Ruggles-Brise with a special treatment to youthful offenders, 16—21, in London prisons. This he did after he had visited and studied the American 'State Reformatory system.' He said :

> The point I was aiming at was to take the "dangerous" age, 16 to 21, out of the Prison System altogether, and to make it subject to special "Institutional" treatment on reformatory lines....... I was impressed by all that I saw and learnt at the principal State Reformatories of America, at that time chiefly in the States of New York and Massachussets. The elaborate system of moral, physical, and industrial training of these prisoners, the enthusiasm which dominated the work, the elaborate machinery for supervision of parole, all these things, if stripped of their extravagances, satisfied me that a real, human effort was being made in these states for the rehabilitation of the youthful criminal.

A small body was formed, known as the London Prison Visitors' Association to visit these juveniles. These were later removed to the old prison at Borstal which gave the name of Borstal Association to the body and later that of Borstal system to the whole scheme. After some years of experience, the mover applied for legislative action and the outcome was the Borstal Act of 1908. The Prevention of Crime Act, 1908, was designed to 'make better provision for the prevention of crime, and for that purpose to provide for the reformation of young offenders and the prolonged detention of habitual criminals and for other purposes incidental thereto.' It is a short Act, part i of which is solely concerned with the measures relating to adolescent offenders. It provided for a young offender being detained in a Borstal Institution for a period 'under such instruction and discipline as appeared most conducive to his reformation and the repression of his crime.' The Criminal Justice Administration Act, 1914, took a further step. It was intended to 'diminish the number of cases committed to prison, to amend the law with respect to treatment of young offenders and otherwise to improve the administration of criminal justice.' It takes advantage of the system of probation, and encourages establishment of institutions for care of juvenile offenders.

Among systems for the reclamation of juveniles the foremost place is taken by the "George Junior Republic." This institution arose from the Freeville Fresh Air Camp, which was intended originally for the purpose of giving fresh air and health to the boys and girls of New York. Mr. George suggested to the young company that in order to get the most fun out of life they should do some hard work. He proposed that they should construct a model piece of roadway in front of the Fresh Air cottage and the boys were otherwise taught to work for anything they wanted.

It was then discovered that the boys and girls would not always respect the rights of others. It was arranged that the boys and girls should themselves dispose of all cases, and corporal punishment was commuted to extra work. The system of trial by jury was started and gradually the idea of a junior republic, with boys and girls as citizens, with powers of governmet, legislative, executive and judicial, dawned on Mr. George. It resembles a village with a number of cottages and it is worked out quite as naturally as in the world at large. The government consists of functionaries, such as president, vice-president, a police force, a judiciary to try civil and criminal cases, etc., etc. There are simple offences and indictable offences, the later being tried by a jury. The scheme is novel and is being tried with success.

The Borstal School has come to be a sort of modified public school where an earnest endeavour is made to construct a new character for the inmates.

This feature was stressed by the Bengal

Government in their resolution on the Jail Administration Report for 1933. It stated :

> The Governor in Council regrets to notice that, while the number of juvenile prisoners is still abnormally high, the population of the Borstal School, Bankura, has shown a steady decline since 1930, the inmates numbering only 171 at the end of 1933 as compared with 373 at the end of 1930. It is difficult to resist the conclusion that Magistrates are sentencing boys to short terms of imprisonment and subjecting them to the obvious risks of a prison-environment instead of giving the opportunity of going through the useful and reformative training afforded by the Borstal System. It is possible that Magistrates are apt, through ignorance of the nature and purpose of detention in the Borstal School—the minimum period of which is 2 years—to think of it in terms of imprisonment in Jail. This is of course a serious error, for there is no comparison between the two forms of detention, and it should be remembered that the essence of the Borstal System is to give a training of permanent value, which cannot be given in a short period, and that the Borstal School at Bankura is essentially a *school* from which the prison atmosphere is absent and of which the chief object is to instil into the boys a spirit of honour, self-respect and sportsmanship. The Governor in Council attaches great importance to a proper utilization of the possibilities of detention in a Borstal School as a means of reclaiming young persons who have not gone far in crime and whose age renders them susceptible to good influences, and the attention of the Magistracy

will be drawn to the importance of making more use of this valuable institution.

The above excerpt at once shows the nature of the system of training, the usefulness of it and the need for making more and more use of the institution. It spares me trouble in elaborating the scope of the movement in Bengal. The present trend in India is of extending scope of the system all over.

Apart from the Borstal School at Bankura in Bengal, of which we have just spoken, there are others elsewhere and one at Chingleput in Madras has been worked with singular success. An account of this reformatory can be read in 'The Making of Men', an illustrated volume by J. W. Coombes who has been associated with the institution for a number of years. The book besides being descriptive and informative, has some suggestions to make regarding treatment of juvenile offenders.

Measures to obviate evils of imprisonment in cases of all include the Conditional Conviction or Discharge. The most important characteristic of the law providing for this is the wide discretion left to judges and magistrates to mitigate the punishment, to suspend it, or to do away with it, if they think fit, in certain circumstances.

As far back as 1879 the Summary Jurisdiction Act provided alternative sentences for first offenders. Section 16 of the Act was analogous to section 562 of the Indian Penal Code and provided for conditional release on giving security.

The probation is an American contribution. It furnishes an illustration of the development of a non-punitive method of dealing with offenders. It should be distinguished from parole as the two are often confused for each other. Probation applies to offenders before they are sent to any institution. It is a method of correcting without the use of prison or reformatory. Parole, on the other hand, is the release from a correctional institution of an offender who remains, however, under control of the authorities. Probation is a first step whereas parole is a last in a scheme of correction.

Probation is thus the suspension of a sentence during a period of liberty in the community conditional upon good behaviour of the convicted offender. The sentence may be suspended before imposition or before execution. Some states in America suspend the imposition, some the execution, and some use both the methods.

The history of the system is rather interesting. Among the early volunteers who began to assist offenders during the period of the suspension of the sentence was John Augustus, a shoemaker of Boston, who during the course of seven years acted as surety for 253 males and 149 females in an amount that totalled 15,320, and it is recorded that not one of his charges violated the conditions of his release. Such volunteers came forward in larger and larger numbers and were, in effect, probation officers before the institution was officially recognized. The earliest statute was the Massachusetts law of 1878 authorizing the Mayor of Boston to appoint a probation officer and the court to place offenders on probation. The progress of the movement was, however, slow. Since 1900 it has, again, proceeded apace and by 1917 it has been authorized by every state. The number of persons placed on probation in Massachusetts increased from 15,518 in 1910 to 34,305 in 1930 and in New York from 8,637 in 1910 to 25,849 in 1929. Figures in other states will not be as high but the system is in wide use all over.

Most states have placed various limitations, some on age of the delinquents, some on the type of crime, etc. The terms of probation include generally : observance of all laws, good habits, keeping good company, regular reports as required, regular work or school attendance, payment of fines or reparation. The probation officer is enjoined upon to inform the court of breaches of conditions. The court may then warn the probationer or impose the sentence for the original offence.

Like all human institutions, probation has been severely criticized. Gillin says :

> It has been charged (1) that it often results in more regard for the delinquent than for the injured party ; (2) that when applied to all first offenders without regard to mentality, personality and previous history of the offender it results in recidivism ; (3) that it is difficult to ascertain whether the delinquent is a first offender and therefore repeaters often are admitted to probation to the injury of both the criminal and society ; and (4) that probation officers are so inefficient that probation is a farce.

Sutherland says :

> Certain objections have been raised against probation of which the most important are the following : (a) probation does not satisfy the desire for revenge and therefore tends to eliminate the incentive for prosecution ; (b) probation tends to increase crime by decreasing the penalty ; (c) probation replaces the offender in the environment which produced the crime and therefore is likely to produce no modification in behaviour ; (d) probation is utilized by politicians to secure the release of their friends.

These objections represent rather minor blemishes in an otherwise admirable institution.

Sutherland considers only one of these objections, that by professor Kocourek, as meriting some discussion. The argument of the professor takes the following shape ; Support for prosecution must ordinarily be secured from the injured party and this support is given because of the desire for revenge. As probation increases, the number of injured persons who will be willing to go to the trouble of prosecuting offenders will decrease, because they will secure so little satisfaction from it. Though restitution may be made by probationers, this does not serve as a sufficient incentive to the injured party, since civil process is a much more certain means of securing restitution.

Sutherland observes that it is fallacious to assume that the desire for the revenge is the only or the most important reason for prosecution, that the general motive is to prevent a repetition of the offence, that there are persons who would rather refrain from prosecution if imprisonment with its evils were to be the invariable result, that probation, to some extent, satisfies the desire for revenge by showing up the offender in public and that the amount of injury that must be inflicted in order to satisfy a desire for revenge has been a distinct variable. Furthermore, the criminal court with its combination of probation and restitution, is a more effective means of securing financial compensation for injury than the civil court, in a large proportion of cases. Finally, if all of these considerations amount to nothing, there is still the possibility of organizing the courts on the basis of social welfare rather than of revenge.

Probation to be socially useful in the treatment of the delinquent, must be improved in the light of the following principles :

1. Good probation must be based on thorough investigation.

2. Investigation and treatment must be indivisualized. This is the golden principle of modern penology.

3. The term of probation should not be fixed in advance.

4. The home and neighbourhood must be used to rehabilitate those on probation, especially juvenile offenders.

5. Both diagnosis and treatment must take account of physical and mental conditions.

6. Special social organizations and groups may profitably be used supplementary to the regular probation officers.

7. The programme should include co-operation with all the agencies of the community which can help.

8. Probation officers should be trained.
9. Probation officers must be well paid.
10. Supervision of the offender should not be lax nor yet too close.
11. Probation should be extended to rural communities.
12. State supervision is necessary for effective work.

These are some of the improvements suggested by Gillin who concludes that in spite of handicaps, the success of probation has been phenomenal. It is only a part of a correctional system but a very important one.

With regard to the evils of imprisonment enumerated in the previous chapter I shall mention a few improvements effected to mitigate them by better organization within. The trend of modern times has been towards reformation and hardships which only embitter feelings of the inmates are being gradually eliminated.

The Pennsylvania system. The prison leaders in Pennsylvania contended that the association of all types of criminals in prison was really disastrous. They suggested that prisoners should be kept in solitary confinement so that they could not communicate with anybody else except the warder and the chaplain. Labour was first prohibited and then allowed. A solitary cell was allowed to each and work could be performed in the cell itself. In each cell there was a Bible, the only reading matter permitted. No letters could be written to anyone outside. The prisoner was, for all practical purposes, shut away from the world. The ideas underlying the system were preventing contamination and helping wholesome reflection. The punishment was supposed to be mental and social rather than physical.

The system was trumpeted as a great achievement and was even imitated in some European prisons. It was also decried by many. Charles Dickens after having visited the Penitentiary of Pennsylvania expressed himself thus :

> In its intention, I am well convinced that it is kind, humane, and meant for reformation, but I am persuaded that those benevolent gentlemen who carry it into execution, do not know what it is that they are doing. I believe that very few men are capable of estimating the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers ; and in guessing at it myself, and in reasoning from what I have seen written upon their faces, and what to my certain knowledge they feel within, I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon

his fellow creature. I hold this slow and daily tampering with the mysteries of the brain, to be immeasurably worse than any torture of the body ; and because its ghastly signs and tokens are not so palpable to the eye and sense of touch as scars upon the flesh ; because its wounds are not upon the surface, and it extorts few cries that human ears can hear ; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay. (Gillin)

The other system fairly well-known is the Auburn system. The institution is known from the prison at Auburn which was authorized in 1816 and a part of which was to be used for solitary confinement. The Auburn system also attracted wide notice. Both the systems were more alike from the beginning than they were different from each other. Both prevented the prisoners from communicating with one another and locked them up in separate cells at night but the basic difference was that under the Pennsylvania system the convicts were separate from one another all the time while under the other, the prisoners knew one another, although they could not communicate mutually except upon pain of punishment.

It has been now held that both systems were wrong. The complete isolation does not help any reformation nor does possibly incomplete isolation either.

A new system tried in Europe and Australia then attracted notice. This system was started in an organized manner in the Australian convict camps by captain Maconochie. The first institution based on this system was the Elmira Reformatory in New York, created by law in 1869 but not opened until 1876. Emphasis was placed on education, productive labour, the mark system, the indeterminate sentence, and parole.

The great advance which the Elmira system marked over Pennsylvania and Auburn systems was the fact that in this later type of penal discipline the term of incarceration was at least roughly made to depend upon the observable progress made by the prisoner towards reformation. It thus chiefly stressed reformation rather than either retaliation or deterrence.

Very nearly the word punishment has gone out of use so far as the system is concerned. At Elmira every prisoner who receives a "first class report" is at once taken to the "guard house", where he is tried by the disciplinary officer who usually upon conviction orders longer detention in the reformatory. "First class" reports are given for all such offences as disobedience of orders, lying, profanity or vulgarity, malicious disturbance, and fighting. Offenders in these respects, however, were very few. A stranger could go over the institution any day without seeing any breach of discipline. The daily routine consists of schooling, subjects taught being arithmetic, language, history, nature studies, ethics, sociology, and literature ; trade school, trades taught including those of barber, book-binder, bricklayer, cabinet-maker, carpenter, cutter, electrician, house-painter, stenographer and typist ; moral education, providing chaplains lecturing to respective followers of religion ; and physical and military education in which gymanstics, drill, and physical culture are taught.

The methods employed are generally varied as experience dictates change. The reformatory idea thus mooted spread and was followed up by the establishment of adult reformatories for men in the different states. The idea also led to the establishment of women's reformatories. Notably among those functioning are the Woman's Reformatory of Massachusetts and the New York State Reformatory for women. The women are looked after with the same care or more, as men in the adult reformatories outlined above.

The vast number of prisoners dealt with in the various penal and reformatory institutions would appear from the following table given by Sutherland.

Prisoners in institutions in 1923

Class of Institution.	PRESENT JAN. 1		COMMITTED DURING 1923	
	Number.	Per Cent	Number	Per Cent
TOTAL.	132,078	100.00	376,133	100.0
Federal prisons. ...	4,664	3·5	3,703	1.0
State prisons. ...	61,825	46.8	24,255	6.4
State reformatories. ...	14,446	10.9	9,627	2.6
State, country, and municipal institutions for misdemeanants. ...	28,140	21.3	319,908	85.1
Juvenile reformatories....	23,003	17.4	18,640	4.6

A remarkable experiment in Soviet Russia in the line of reformatories deserves mention. There is the Bolshevo, a unique reformatory of which Sydney and Beatrice Webb speak in glowing terms. The Webbs who have visited it assure us that it goes further, alike in promise and achievement, towards an ideal treatment of offenders against society than anything else in the world. About a thousand inmates are accommodated in the establishment and criminals from every part of the Union are shown there that a life of regulated industry and recreation, of freedom, (even wives are allowed to live with the prisoners in some cases) is one to which the prisoners should turn. There are other settlements on lines of the Bolshevo and considerable success is claimed for all.

One of the methods devised originally to rectify miscarriages of justice but sometimes used to soften the severity of prison discipline is the use of the pardoning power. A pardon is 'an act of mercy or clemency, ordinarily by an executive, by which a criminal is excused from a penalty which has been imposed upon him.' The use of pardon is ancient and goes back probably to certain customs in the early tribal life of primitive peoples. It has been imitated from an English institution which originated probably in the tribal life of the Teutonic peoples. This royal prerogative has been sought to be curtailed but has survived. A number of English writers, such as Hobbs, Hale, Holt, and Hawkins, attempted to work out a theory of pardons in a system of penal law. Beccaria admitted the necessity, and Blackstone defended the right of pardon.

Pardon may be either conditional or absolute.

The power rests with the chief executive officers and recently in some places their responsibility has been limited by the development of pardon boards. The use of pardon is also met with in India.

Pardons are regarded as justifiable because of errors of justice which are only likely to creep in human judgments. Doubt arises sometimes regarding guilt and sometimes regarding the justice of the penalty. An extreme pronouncement in its favour is one by Tedrow who said before the American Prison Association in 1911, "For one abuse of the pardon power there are a thousand abuses of the convicting power."

The criticisms urged against the system of pardons include executive officers' amenability to political influence, the lack of time on their parts to go into details of cases, the tendency of prisoners to simulate reform in the hope of release, the carelessness on the parts of judges in imposing sentences, the possibility of its use as a form of prison evacuation for other prisoners, etc., etc.

The extreme statement by Tedrow quoted above does not apply to the British system of administration of justice, in which the accused are presumed innocent, are entitled to the benefit of doubt and are otherwise adequately safeguarded by scrutiny of higher and higher appellate courts. The use of pardon in India has consequently been infrequent and no abuse of any grave nature has been alleged.

Closely connected with pardon is commutation of sentence which means a reduction of the penalty by executive order. Amnesty is pardon applied to a group of criminals on specific occasions. The King in Italy in 1930 on the eve of a royal wedding granted amnesty to 6000 convicts. Amnesty for political prisoners in India was granted on occasions in the past. There is reason to discourage such amnesties generally. It has now been almost entirely abandoned in America.

Of late the system of parole has grown in popularity. I have indicated in connection with probation how the two should be differentiated. A system of parole cannot operate by itself, but presupposes a prison or reformatory. The parole board is the agency which has the duty of determining when a prisoner should be released.

The origin of parole may be traced to the system of ticket-of-leave which obtained in England. The line of treatment was based upon classification, a system of marks and conditional release. In the experiments of Maconochie whom we have mentioned in connection with the Elmira Reformatory may be found the roots of the present system of parole.

Parole is the 'act of releasing or the status of being released from a penal or reformatory institution in which one has served a part of his sentence, on condition of maintaining good behaviour and remaining in the custody and under the supervision of the institution of some other agency approved by the state until a final discharge is granted.' The conditions imposed ordinarily include : 'leading a law-abiding life, abstaining from intoxicating liquors and drugs, keeping free from bad associates, spending evenings at home, refraining from gambling and other vicious habits, supporting legal dependents, remaining in a specified territory, not changing residence or employment without permission (sometimes merely without reporting the change), attending church at least once each Sunday, not marrying without permission, not becoming dependent on charity, making reparation or restitution for the crime, and making written or personal reports as required.'

The success and failure of parole have been urged by enthusiasts and opponents. A great deal of criticism has also been levelled against the institution, probably too prematurely. Like all human institutions, it suffers from certain drawbacks. It cannot be applied to all offenders and if it is to be socially useful, it must be conducted on the following broad principles enumerated by Gillin.

1. Careful diagnosis of the prisoners by Experts.
2. Selection for parole of only those whose release will not outrage the sense of justice of the community from which they come.
3. Selection for parole of only those inmates the study of whom shows that they will probably do well on release.
4. Proper employment should always be secured before a convict is paroled.
5. Placement in proper surroundings.
6. The institution must prepare for parole.
7. Careful follow-up is absolutely necessary.
8. Co-operation with private and public social agents.
9. A full-time paid Parole Board.
10. Paroles and pardons should be under the same Board.
11. This Board should be composed not of political appointees but of men of intelligence and integrity having experience in such matters.
12. The responsibility for paroles should rest upon this Board.
13. Parole success is connected with the extension of the indeterminate sentence.

14. Parole officers must be numerous enough and well enough trained to give adequate supervision.

To the above should be added the following further principles in the case of women :

1. Even closer after-care is necessary than in the case of men.

2. The utmost care must be taken for the protection of the girl.

3. Every resource must be commanded for the education or re-education for useful social life.

4. The plan for the girl must have a long look ahead.

5. The purpose of parole must ever be kept in mind and every step in the treatment must seek to realize that purpose.

The introduction of parole on a wide scale has yet to be made in India. Premature releases are made here on recommendations of Advisory Boards and in consultation with the local executive officers. These releases are made in non-professional crimes and are not followed by any supervision of the offenders as in a system of parole.

It has been suggested that instead of any executive body reviewing sentences with a view to determining the question of premature releases, the task should be left to the courts to be performed by periodic judicial review of sentences. The arguments in favour of this arrangement are based on the belief that the courts have superior personnel, that they are more completely free from political and other influences, and on the consideration that the matter is connected with the administration of justice and that the judges may, otherwise, become inclined to impose careless and exhorbitant sentences counting upon the inevitability of premature releases, in certain cases. The difficulty, however, would arise in convincing the court that the earlier sentence was a mistake, orthodoxy and self-confidence precluding alteration by them of sentences already passed.

Closely connected with parole and premature release is the subject of the 'indeterminate sentence'. It has been argued that moral cure is bound up with the indefiniteness of the term of detention. Fixity of sentences clogs reformation, the prisoner depending on the time-element alone. As a great judge said, 'to establish a fixed term for each crime would be the same as if a physician prescribed treatment for a patient, determining on which date he is to leave the hospital whether cured or not'.

The genesis of this idea may be traced to the days of Inquisition when a man might be ordered to be imprisoned for such time as seemed expedient to the church. An analogy is also provided by the criminal lunatic who is detained during His Majesty's pleasure. The positive aspect of this, viz, making reformation the key to release and placing the key in the hands of the offender, has been regarded as the descendant of the Mark System adopted by Maconochie.

We can dismiss the case for the indeterminate sentence with a few observations :

1. It is a very good system in theory but will prove a hard thing to put into practice in the present state of society. The time fixed within the maxima prescribed by law is nearly always sufficient for the reformatory treatment to take effect if it is ever going to.

2. The analogy of the patient in the hospital does not apply so well to the case of a prisoner. In the case of bodily infirmity, objective tests have nearly been perfected to show unmistakably if a particular patient has been cured of his ailment whereas there could be no guarantee of a criminal having reformed completely. He may easily pass off as reformed by showing an agreeable exterior.

3. As we have seen, a criminal is made by various influences within and without working on him. There is no golden way of reforming him and none either of keeping him straight for ever afterwards. Even a perfectly reformed criminal may relapse into

crime soon after release on account of a vicious environment acting on him. There is no sense in insisting on a relapse-proof reformation as even a medical authority could not guarantee that his patient, ever so completely cured, will remain free from ailment for all the time to come.

4. The prospect of premature release also on good conduct would seem to offer sufficient incentive to the prisoner for early reformation.

5. It is problematical whether to make the inmate's release absolutely dependent on the prison authorities would tend in any way to develop moral fibre. It is certainly out of question at the present times when jail warders are little better than coolies and officers of the subordinate ranks are hardly more enlightened than office clerks. Public sentiment will not approve a sentence without a maximum limit, more so when a prisoner sentenced to imprisonment is completely lost sight of and has slender means of reprsenting grievances.

6. Uncertainty regarding the time of release is sure to cause much anxiety to and for prisoners. Some have stated that they would have preferred a longer term fixed in advance to the shorter term with its early period of worry and anxiety while they awaited a decision of their fate by the parole board.

7. Till the jail officers have acquired for themselves public confidence to the extent of the judges, the indeterminate sentence may be open to favouritism or graft. Prisoners and those interested in them

will come to look upon every act of release as more preferential than just.

These considerations are weighty enough and should suffice to put off the question of the indeterminate sentence indefinitely for the present.

The question of the habitual offender constitutes a different problem. With such a man, crime, instead of being an occasional hobby, or the result of unemployment, is a full-time job. For him we have here in India enhanced punishment on subsequent convictions. Besides, he can be bound down to be of good behaviour for a period upto three years and in default of furnishing fit sureties, undergo imprisonment for the period. This procedure is largely resorted to by the police to keep in check confirmed bad characters. Other punitive or rather preventive measures consist in surveillance exercised by the police over movements of such criminals. An extreme measure is the registration of bad characters under the Criminal Tribes Act. Registered members under this Act are required by stringent conditions not to absent themselves from home at night, not to change residence without previously intimating the police, etc., etc. We shall discuss these measures further ahead.

·Habitual-criminal laws have been passed by almost every country. In England a person cannot be officially labelled as a 'habitual offender' who has not had at least three convictions since the age of sixteen, and is not proved to be living dishonestly. 'Preventive detention' is prescribed for such criminals and is carried out at Camp Hill, adjoining Parkhurst Convict Prison in the Isle of Wight. 'Preventive detention,' as carried out at Camp Hill, is the nearest approach to an indeterminate sentence. The conditions at Camp Hill are not so very rigorous as the idea would suggest. The men, on reception, are allotted to stages in which the degree of rigour varies. All subjected to the regime there live in association, and, if industrious and well reported on, are eligible for various little privileges and also when the day's work is finished, are allowed to play chess, draughts, etc. The highest stage is reached by well-behaved inmates, usually after two years, when they live in 'parole cabins' fairly furnished and have garden allotments, etc. The governing idea of this stage is to fit a man to return to liberty by showing him that he can be trusted to work and conduct himself properly without ceaseless and humiliating supervision.

Habitual-criminal laws have been passed in the States of America. Thus, in 1933 thirty-three States had such laws. Increasing severity of penalties was provided for and seven States made a life sentence mandatory on conviction of a third felony and nine on conviction of a fourth felony.

Preventive detention in a sense was applied to political offenders of a subversive attitude lately in India, particularly in Bengal. The confidential records were examined minutely by responsible officers prior to such offenders being declared as detenus. They were detained in special jails or quartered at police stations with movements restricted in the latter case to specified areas. The principle of detaining men who have not been convicted in a criminal court was hotly contested. It was, however, urged that these people constituted a menace to ordered society and Government was justified in taking steps to prevent it. The detenus were, however, treated as a separate class and were allowed various privileges denied to ordinary prisoners. They were also given personal and family allowances.

Closely connected with preventive detention is the separation of mentally abnormal convicts and the provision of their psychological analysis and study under clinical observation. The connection between mental abnormalities and criminal conduct has received a growing recognition in the last century. The studies of White, Healy, Glueck, and others, the unparalleled progress of psychiatry or medical psychology due to studies of eminent thinkers from Pinel to Charcot, Janet, and Freud, the humanitarian considerations brought to bear on the problem of crime from the times of Howard and Fry—all these have led to the establishment of institutions where lunatic, idiotic, and feeble-minded persons committing crime or showing disposition to, are treated. We have already seen that a certain percentage of criminality is due to abnormality or feeble-mindedness, although we stressed the fact that it could not be accepted as the sole or even the major cause of criminality. There is undoubtedly need for separate provision for segregating the mentally afflicted convicts for psychiatric treatment.

Lastly comes the question of after-care. We have seen that the exits from prison are more numerous than the entrances into prison. I have also delineated the plight of the criminal after he is out of the prison. His stigma follows him and when he looks for a job he is looked up and down and shunned. To my mind, there is no stronger incentive to recidivation than this state of helplessness of the criminal who returns home. There are certainly hardened criminals who make a business of wrong-doing but the great majority of the criminals whom we brand as habitual criminals repeat operations by being forced as before by environmental conditions. Society in its exasperation provides for increased penalties but these so-called habituals seem to take the risks. Have you ever tried the simple experiment of confining a dog in a room and placing food at a corner ? Beat the dog as much as you like on every attempt to reach the food, you will hardly stop him from attempting again as long as he can move. The inhibitory efficacy of the punishment will be more than counter-balanced by the pinch of his stomach. With the criminal so helplessly placed in the present state of society the state of affairs seems to be almost the same. His family may have borrowed and then begged, but with his return it looks to him for support. If he now finds all avenues of honest livelihood shut, is it to be wondered that he takes to his old life again ?

What is essential for the success of all these penal methods is sympathetic after-care for released criminals. Crime being a social phenomenon, it is an imperative duty not only of the state but of each responsible member of the society to take active steps towards combating it. Punishment is only one method and even then its efficacy is being increasingly challenged. There are far more effective social measures and the great forces of science and of statesmanship in our civilization should be directed towards them.

There are splendid instances of private institutions for after-care. There are Salvation Armies looking after a percentage of detained and released convicts. But there is need for infinitely more of their kinds. Year after year, the jail administration reports lament the lack of public interest and want of men for organizing after-care associations.

The apathy of the public towards the work of the care of prisoners was commented upon, only the other day, in the annual report of the Bengal After-care Association for the year 1937. It laments that neither in Calcutta nor in the interior of Bengal have the Association's ideals yet been able to capture the public imagination, or to command any real popular support. Outside Calcutta the state of affairs, as disclosed, has been very disappointing. District associations have been formed in only eleven districts and as many as five of them had not even sent in their annual reports for the year 1937. Mymensingh has been reported to be the only district that had done some work. The total admissions to the association's hostel during the year numbered 193 against 177 in 1936. Attempts are made by the associations to find employment for the boys and otherwise help them to get back to decent normal life. It would seem that the idea of the Association is commendable but the response has been lamentably poor. It will be a very good thing if the various religious and philanthrophic missions and organizations take up this work in addition. There is need for employment bureaus also.

In summing up, I must stress the fact there has been found as yet no single 'cure-all' for all types of criminals. As a matter of fact, it may be reasonably predicted that there will be none in the near future either. The realm ofpenology has been one of chaos. Man began to punish in the way of instinctive reaction. When punishment began to fall short of the desired efficacy, he began to increase its severity like the unenlightened quack who may be increasing the dose of a particular medicine in the hope that its efficacy will be increased in direct proportion to its volume. It has now been found that efficacy of treatment will depend on true diagnosis and that treatment must be varied in the circumstances of each case. There may be people who will look askance and ask why all these kind considerations for one who will break the law. It is for them particularly to go through the detailed discussion of the nature of the criminal I have made in part I. of this book. Penology in the years to come will go its way despite opposition and it can even afford to be stoically indifferent to popular misrepresentation.

The broad principles upon which penal treatment should be based were thus enunciated by the international Union of Criminal Law which met in 1889 :

1. The mission of criminal law is to combat criminality regarded as a social phenomenon.

2. Penal science and penal legislation must therefore take into consideration the result of anthropological and sociological studies.

3. Punishment should never be isolated from social remedies nor must preventive measures be neglected.

4. The length of the imprisonment must depend not only on the moral and material gravity of the offence but also on results obtained in treatment in prison.

5. Incorrigible criminals should be put for as long a period as possible under conditions where they cannot do any harm.

The principles indicated above will require a scientific programme of penal treatment. This will require :

(a) The function of a court which should be scientifically enlightened, should be the determination of guilt. An enlightened criminal procedure will have to be devised in the light of modern developments in thought and practice and must be bereft of much of the present traditional and antiquated anachronisms. We shall study this topic in the next Part.

(b) The establishment of a receiving and diagnostic institution which should be a clearing house for all prisoners. In the new system it should be the procedure to bring every person convicted of crime before a competent and permanent examining body made up of physicians, psychiatrists and psychologists, who will be able to study and differentiate the convicts and prescribe the desirable methods of treatment indicated by the specific defects of the individual convict.

(c) A certain number of convicts will be revealed at once to be of a type that should not be restored to life of freedom but should be segregated for continued treatment. Feebleminded criminals, paretic criminals and other types of low grade degenerates or incorrigibles would make up bulk of this class.

(d) A co-ordinated group of specialized state penal institutions should be designed to carry out the types of programme tentatively devised at the Receiving House.

(e) The recognition of penal institutions as educational agencies primarily concerned with the social adjustment of criminal offenders.

(f) The enlightened processes, such as, probation, Parole, etc, should be more availed of.

While much has been done towards bettering prison conditions much remains yet to be done. The goal to be attained may be indicated in the words of Bernard Shaw :

" When detention and restraint are necessary, the criminal's right to contact with all the spiritual influences of his day should be respected, and its exercise encouraged and facilitated. Conversation, access to books and pictures and music, unfettered scientific, philosophic, and religious activity, change of scene and occupation, the free formation of friendships and acquaintances, marriage and parentage : in short, all the normal methods of creation and recreation, must be available for criminals as for other persons, partly because deprivation of these things is severely punitive, and partly because it is destructive to the victim, and produces what we call the criminal type, making a cure impossible. Any specific liberty which the criminal's specific defects lead him to abuse will, no doubt, be taken from him ; but if his life is spared his right to live must be accepted in the fullest sense, and not, as at present, merely as a right to breathe and circulate his blood. In short, a criminal should be treated, not as a man who has forfeited all normal rights and liberties by the breaking of a single law, but as one who, through some specific weakness or weaknesses, is incapable of exercising some specific liberty or liberties.

This is looking a long way ahead so far as India is concerned and will appeal neither to the orthodox section who would like increased penalties alone nor to those who consider that India *has* already enough of administrative bliss.

CHAPTER XVIII

THE EFFICACY AND ETHICS OF PUNISHMENT

Objects of punishment: Elimination, restraint, expiation, restitution, reformation, etc.

Theories of punishment — Various schools — the Radical school.

Efficacy of punishment — Values, etc.

Economy of punishment—Limitations of the values—The modern outlook.

We shall study under this comprehensive heading the objects, theories, achievements, and economy of punishment. We have already indicated the origin and evolution of punishment and its forms and their modifications.

The objects of punishment have varied as also have its forms, etc. As a matter of fact, its forms have varied according as one thing or another was the object.

Among primitive peoples, generally speaking, the object was to get rid of the culprit who had incurred the wrath, and had aroused the fear of the community. The fundamental object psychologically was to wreak vengeance upon the offender and the primary avowed object was to get rid of the culprit who had endangered the public.

Gradually, other objects of punishment came to be recognized such as restraint and deterrence and later, restitution and reformation. In one phase and a very prolonged one, suffering and expiation were believed to be the main objects. This was so when all laws were considered to be divine. We shall detail this feature as we study the evolution of criminal law in the next chapter. The Hindu law is deterrent and expiatory. The Christian Church constantly taught that God will punish with everlasting torment. His punishment will continue for a long time, if not eternity, though sin or crime was committed in a finite existence.

Jonathan Edwards, the noted preacher, in his famous sermon, "Sinners in the Hands of an angry God", thus describes the future plight of the sinners :

> They (sinners) deserve to be cast into hell ; so that divine justice never stands in the way, it makes no objection against God's using His power at any moment to destroy them. Yea, on the contrary, justice calls aloud for an infinite punishment on their sins. Divine justice says of the tree that brings forth such grapes of Sodom, "Cut it down, why cumbereth it the ground ?" The

sword of divine justice is every moment brandished over their heads, and it is nothing but the hand of arbitrary mercy, and God's mere will, that holds it back.........

Such graphic descriptions are to be found more or less in every book of religion. God has been pictured in the fashion of man and as influenced likewise by the various emotions.

Theories have varied as this or that end of punishment was emphasized. If the degree of punishment to be inflicted was to be determined solely by the feeling of vengeance aroused by the offence as it did formally, the reaction varied with the strength and indignation of the aggrieved party. Punishment was said to be retributive in nature. This retributive theory of punishment may not have been avowed. But perhaps in no age were the other objects of punishment completely overlooked. Thus retribution, deterrence and reformation were blended together in varying porportions in every stage of thought, although the one came to be stressed and the others subordinated. Even at the present moment they all come in varying proportions in any idea of punishment.

The reader is referred to the chapter on Criminal Responsibility which will follow for an account of the views of the various schools of penology with regard to punishment. The only school that requires a mention here is the Radical School which is inspired by extreme humanitarianism. It denounces all kinds of reaction against criminals except oral persuasion and the strengthening of the public sentiment against them. According to it, the object of reformation is best furthered by giving free play to the spontaneous repressive effects of nature to which the offender is exposed through his crime, only some of the radicals admitting that punishment is a tutelary function of the State. Count Tolstoi's motto was 'Resist no evil by evil'. Perhaps Mahatma Gandhi's doctrine of *Ahimsa* would also support this school.

The value and efficacy of punishment can now be considered.

Punishment was early justified by considerations of a transcendental nature. God or gods where supposed to be placated by making the sinner and the criminals suffer. After this view came to be weakened, other social considerations were urged in justification of punishment. Before considering these, let us consider the definition of punishment itself.

Punishment has been defined by Westermarck as follows :— "By punishment I do not understand here every suffering inflicted upon an offender in consequence of his offence, but only such suffering as is inflicted upon him in a definite way by, or in the name of, the society of which he is a permanent or temporary member."

Oppenheimer defines punishment thus :—"Punishment is an evil inflicted upon a wrongdoer, as a wrongdoer, on behalf and at the discretion of the society, in its corporate capacity, of which he is a permanent or temporary member."

Thus two essential ideas are contained in the concept of punishment as an instrument of public justice. (i) It is inflicted by the group in its corporate capacity upon one who is regarded as a member of the same group. War is not punishment, according to this, because the suffering is inflicted upon foreigners, nor is loss of reputation or social degredation which follows a crime except where this is deliberately administered by the group in its corporate capacity. (ii) It means pain or suffering produced by design and justified by some value that the suffering is assumed to have. Thus the confinement of an insane person is not punishment although it involves suffering. Many of the modern methods of dealing with criminals are not punishment in the above sense of the term. In view of this uncertainty it will be preferable in the long run to substitute the term 'treatment' for 'punishment' or adopt any other suitable term.

As to the necessity and utility of punishment, we may mention here in brief what has been urged by supporters :

(i) Punishment serves to liquidate the human urge for retribution. It serves, moreover, to check and control the urge. It is commonly believed that the criminal deserves to suffer. This suffering when imposed by the corporate society becomes the political counterpart of individual or group revenge. As Sir James Stephen stated, criminal procedure is to resentment what marriage is to affection : namely, the legal provision to an inevitable impulse of human beings. Thus, it is implied that if the offender goes unpunished, either, or both of these contingencies will follow : the victim will seek individual revenge with the result that where he is strong or is backed by friends and supporters, he will be uncontrolled and disproportionately severe and where he is weak or unsupported, he will put up with all indignities and tortures ; or the victim will be reluctant to offer evidence and the state will be handicapped in dealing with criminals.

We have already indicated the instinctive origin of punishment. In view of such origin of punishment, it must be admitted there is some amount of truth in the above contentions. Let us study this retributive structure of punishment in a little bit more details.

A crime is committed. When this is known, a sort of social reaction follows. Punishment is the name, as we have indicated, that is historically associated with this reaction. The sequence of crime and punishment seems necessary and natural, like that of stimulus and response in the sphere of individual reflex. We can as well speak of a 'socio-cultural reflex' by way of analogy, although the concept may be difficult to fix.

The cycle of events persists to this day. A crime stimulates in the victim and an indeterminate group of individuals an indignation which tends to result in individual hostile acts in satisfaction. These individual acts, however, are inhibited by the expectancy of corporate reaction. Thus there exist an excitement and a dissatisfaction. Officers and agencies then get active, conduct an investigation and prosecution, inflict a 'pain' which according to the socio-ethical conviction has been 'merited' by the offender. The knowledge of such action relaxes the excitement and relieves the indeterminate group of the dissatisfied suspense. The hostile attitude, for the time being, is extinguished.

The cycle of events then seems natural enough. We shall revert to it later.

(ii) Punishment is deterrent. This feature of punishment has two aspects.

(a) Even when the punishment has not been ostensibly yet inflicted, its possibility when believed deters many from committing the acts involving it. This is illustrated by the terrible picture usually drawn by prophets of a state of punishment to be experienced by the wrongdoers in the supposed world to come. Undoubtedly, a great many men were and are deterred from improper acts by such intimidation. I must, however, mention here that the prophets except perhaps false ones, believed in the actuality of the future punishment themselves.

As Sir James Stephen puts it, criminal law is itself a system of compulsion on the widest scale. 'It is a collection of threats of injury to life, liberty, and property, if people do commit a crime.' It is thus a gigantic system of intimidating members to be good.

In both the cases, recourse is had to the emotion of fear for the desired effect. Whether this is a good use of the emotion has yet to be seen.

When deterrence was regarded as the principal utility of punishment, penalties were made as severe as possible and we know how the prophets, though with good intent, lent all their poetic fervour to describing the horrors of the punishment to come.

(b) When punishment is actually inflicted, it is hoped that the offender will have realized that the threat was not a mere empty hoax but something to really befall him and those like him. It deters the man punished because the disagreeable memory is retained.

The psychological basis of this effect is the 'avoiding reaction' of all organisms to what has given them pain. We shall illustrate this by an experiment actually carried out by some scientists.

A narrow tube is made in the shape of a T. Earthworms are put into the stem so that they creep along towards the cross-bar above. When they arrive at the parting of the ways, they can go just as they please whether to the left or right. It is, however, so arranged that if they go right, they get a gentle but disagreeable shock from a pair of electrodes concealed in the wall of the tube. Should they go left, they naturally escape this punishment. Now, the worms choose to go at random at first, going right as often as left Then the fact that the right-hand path is dangerous or painful is forced upon them. After some trials, they go left more often than right. They thus avoid the painful course through bitter experience, so to say.

Man being more intelligent and possessing a far more powerful memory would do this in only a few trials. Even a child learns to avoid fire after burning its finger once. It is thus hoped that a criminal remembers the bitter taste of a punishment he has undergone and avoids the circumstances that occasioned it.

(iii) Punishment is reformative. This follows from what we have seen above. Criminals modify their conduct so that they can successfully avoid the pain. One of the means for this is undoubtedly reformation. This modification is brought about either by creating a fear of repetition of the punishment, by creating a conviction that crime does not pay, or by breaking habits that criminals have already formed. The conventional way in which this is illustrated is by quoting how a mischievous boy keeps from troubling bees after once being stung by them. It was almost universally recognized that one had only to spare the rod to spoil the child.

(iv) Punishment helps social solidarity. It is asserted that respect for law grows largely out of opposition to those who violate the law. A writer maintains that 'the fear of punishment is not the significant value in punishment but rather the legal sentiments, legal conscience, or moral feeling which have been developed in the general public by the administration of the criminal law during previous generations, and which have become so organized that they regulate behaviour spontaneously almost like an instinct.'

More could be said in favour of punishment but we have covered the more important arguments already. The impression I may have given the reader is that punishment is both natural and necessary. I must, however, warn the reader that my method of study has been like that followed in adjudication and we have closed hearing of one side only.

The other side must now heard. We can take up the merits we have recounted serially to see what limitations they may suffer.

(i) Let us consider the retributive structure of punishment first. It must be admitted that we instinctively react indignantly to injuries caused to us, just as any other organism gets infuriated when molested. So far is our reaction natural. If a man hits me, I feel inclined to pay him back. But the analogy is not complete.

In the case of human punishment the link between the stimulus and punishment is not always established by nature. It is often merely socially determined. When a direct offence against the person is committed, the reaction may be or is a natural one. But, say, when a woman was suspected of witchcraft which was entirely an imaginary offence, and the same sort of indignation was felt and even a most cruel death imposed on her, there was a most undesirable social reaction, virulent to the extreme, but having no counterpart in the animal kingdom. Our superstitions, our customs, our taboos have had a great share in determining what is crime and there is no natural crime, despite Garofalo.

We are taken back to the 'conditioned reflex' of Pavlov and his school in considering how and why these unnatural reactions occur in the same way. We do not live wholly by instincts. Although in some cases, stimulus and the response have been nicely adjusted, in many, maladjustment has been possible owing to a conditioned or acquired reflex. Thus while Pavlov's dog will scent food on ringing of a bell when so conditioned, another will have his mouth watering on the passing of a train if that, by chance, happens to be the time when food is given him for a number of times. Thus in certain cases the stimulus *may be a false signal calling forth a response without biological utility.*

Such maladjustment is also possible, nay, has, actually and in a great many cases, occurred in a socio-cultural reflex. Although thus, punishment has a natural retributive basis in part, it has also an artificial structure. So when a crime ceases to be a crime, the social urge for punishment in respect of that crime also loses in intensity till the non-expression of the reflex results in inhibition or total extinction.

We have seen all through how ideas have changed and the severity of punishment has ranged from extreme brutality to comparative leniency at the present times. It is only possible that the idea of punishing the offender may undergo complete extinction in time likewise.

We have already said how a revolutionary change has taken place in respect of education of children. From the rod we have travelled far away.

(ii) The deterrent effect of punishment has also some limitations. Psychologists are taking objection to the well-meant practices of parents and nurses in scaring their wards off into sleep by threats of bogeys and ghosts. Even prophetic intimidation by conjuring up pictures of future torment does not find favour with them. The mind in a state of perpetual fear cannot be said to be a healthy mind. Neither can the body about which the possessor remains in constant anxiety. False fear has done mankind no little harm. Remember the appalling toll of lives even one item of imaginary fear, viz, witchcraft, has taken.

The hope that offenders will keep back from crime through what we have described as the 'avoiding reaction' to pain already suffered, is not altogether without limitations. In the example of the earthworms avoiding the electric shock, the sureness of the shock has to be counted. There is nothing like it in the present social organization. The greatest majority of criminals escape punishment through luck, influence, lack of sure methods of detection, etc. Then, again, punishment instead of deterring may and does develop caution. In such cases, the criminal thinks not of reformation but of the best means of avoiding punishment. In the conventional example of the boy molesting bees, if he comes to know that the bees can be ejected with fire and smoke, he will leave no honey in the hive ! The example of the earthworms, again, can be rebutted thus. In the case suggested, it has been presumed that they could go just as they pleased and that if they went right they suffered the disagreeable electric shock. Now suppose there is food to the right and the worms were intelligent. They would, then, try to reach the food and at the same time avoid the shock. If alternative routes could be found or they could build a bridge with non-conductive materials, they would do so invariably.

The human criminal is thus urged by desires and encouraged by the fact that he can take precaution and that in only a microscopic percentage of cases, criminals are actually punished. For one in jail there are hundred outside.

Ferri brings out the distinction beautifully thus :

> Here, then, we have a primary and potent cause of the slight efficacy of legal punishment, in the picturing of the many chances of escape. First there is the chance of not being detected, which is the most powerful spring of all contemplated crime ; then the chance, in case of detection, that the evidence will not be strong

enough, that the judges will be merciful, or will be deceived, that judgment may be averted amidst the intricacies of the trial, that clemency may either reverse or mitigate the sentence. There are so many psychological causes, which, conflicting with the natural fear of unpleasant consequences, weaken the repellent force of legal punishment, whilst they are unknown to natural punishment.

Then, there is the case of the criminal by necessity. The one that commits crime at the pinch of his stomach has hardly time to think of consequences. I see almost every day how my servants inflict increased doses of pain on stray dogs,—hit them, batter them, sprinkle boiling water on them and repeat doing this till the skins are nearly blotted out and even then fail to scare them off permanently from the drain by the side of the cookshed ! And this inspite of the fact that the dogs can have plenty elsewhere ! Suppose, for instance, a circumstance that will be more in line, where a dog is confined in a corner of a room without food and there is food scattered about. Could you, even with a rod in hand, prevent him from finding the food ? Beat him however much you can, the poor thing will go his way as long as he can move.

This may sound like coddling of criminals but I am far from doing anything like that. There are many arm-chair criminals going unsuspected, there are others who take and stick to crime by choice, and, finally, there are a few who are tight in the clutch of circumstances from which they would fain be out but cannot. These are like the confined dog. A proportion of the so-called 'habitual criminals' is constituted of men like these and as the appellation embraces both these and the criminals by choice, it has been increasingly difficult to deal successfully with the class as a whole. Beat the dog as you please if he makes nuisance at your door when he can find food and playground elsewhere but when the dog is confined, much on his part will *be* excusable.

I have been referring to this aspect again and again in this work simply because it is so often forgotten. The Indian Penal Code laid down a section for enhanced punishment of the offender. There is no wonder that it is so often applied and as often fails to deter offenders. Evidently this provision for increased doses is an old-fashioned one. What is the good of punishing the recidivist with the same punishment which his relapse proves to have become futile in the first instances? Take the cases of the two habitual criminals I have mentioned in the Introductory Chapter. There are hundreds and thousands like them.

If you scan the fruits of their exploits and the rising scale of the punishments actually inflicted, you will only exclaim, "And all this for this much !"

There are people who think that prison-life does not appear distasteful to these fellows and they are rather attracted by it. Well, I cannot reconcile myself to thinking so, for we know we have provided our jails with no staff of missionaries and the warders and others have not yet turned complete Quakers. Besides, these fallen creatures are at least human enough to realize that liberty is not to be met with within those walls. If lower animals when confined feel distinctly uneasy, there is no need even to mention that no love of the cells within walls moves them a bit. "What sane man," as Bernard Shaw asks his clamourers, "would accept an offer of free board, lodging, clothing, waiters in attendance at a touch of the bell, medical treatment, spiritual advice, scientific ventilation and sanitation, technical instruction, liberal education, and the use of a carefully selected library, with regular exercise daily and sacred music at frequent intervals, even at the very best of the Ritz Hotels, if the conditions were that he should never leave the hotel, never speak, never sing, never laugh, never see a newspaper, and write only one sternly censored letter and have one miserable interview at long intervals through the bars of a cage under the eye of a warder ?"

Perhaps, the expectancy of sure food crosses some minds, especially when a morsel outside is difficult to get, but is such a state very creditable to conjecture ? We may as well glorify the state of bliss that is attainable and is in many cases attained, by exasperated persons hanging from a rope or sending a bullet through the brain, in suicide !

We often gloat over a sentence of 5 years' rigorous imprisonment which we can secure for a man convicted for the tenth time on a charge of stealing a few rupee-worth of property and exclaim, "What an eminently suitable sentence for this rogue !" But have, we as citizens ourselves, considered that this 'cure-all' had previously been tried on him for the same disease and we are only repeating doses ? What doctor will repeat a course of treatment that has successively proved a failure ? In such cases, what is really wanted is a change in the mode of treatment, rather than an enhanced penalty already tried.

(iii) The reformative effects of punishment are extremely, limited. The prevention of a specific act by means of punishment does not prove that punishment has promoted the social welfare. The good accomplished thus may be more than off-set by general attitudes produced by it. A child may be deterred from lying by punishment but this may entail other undesirable consequences. The child may develop a 'fear complex'; he may be alienated and estranged. In like manner, the state creates other attitudes in criminals or in the public even when a particular crime is successfully prevented (more often it is not, as we have seen), such as lack of respect for law, lack of patriotism, lack of willingness to sacrifice for the state, lack of initiative, and, in general, a sodden and shiftless character. The most serious consequence of punishment is loss of self-respect. And self-respect of the offender is the basis of all successful efforts for his rehabilitation. Sutherland quotes the eminent psychologist McDougall on this point:

> Physical punishment is effective as a deterrent chiefly because and in so far as it is a mark of the disapprobation of the community. But a man when he has once been convicted and jailed for crime, has lost his regard for social approbation and disapprobation. Such a self-respect as he retains no longer feeds upon the esteem of the community at large; rather it turns to satisfy its craving by demonstration of skill, wit, and boldness in defying the law.

Bernard Shaw in his characteristically brilliant way urges :

> The effect of revenge, or retribution from without, is to destroy the conscience of the aggressor instantly. If I stand on the corn of a man in the street, and he winces or cries out, I am all remorse, and overwhelm him with heartfelt apologies. But if he sets about me with his fists, the first blow he lands changes my mind completely ; and I bend all my energies on doing intentionally to his eyes and nose and jaw what I did unintentionally to his toes. Vengeance is mine, saith the Lord ; and that means that is not the Lord Chief Justice's. A violent punishing, such as flogging, carries no sense of expiation with it : whilst its effect lasts, which is fortunately not very long, its victim is in a savage fury in which he would burn down the gaol and roast the warders and the governor and the justices alive in it with intense satisfaction if he could.

Reformation must be a constructive process. Certainly more than fear is required for an alteration of character and personality. But so far we have hoped to guide one in positive behaviour by means of a negative reaction.

Sutherland states :

> Reformation means not only a determination to change one's character, but a constructive process of organizing and reorganizing character. Materials for the construction of character are therefore necessary, and pain does not furnish these materials. One must have

stimulations, patterns, suggestions, sentiments, and ideals presented to him. And the individual must develop his definition and attitudes by practice, generally in a slow and gradual manner, in association with other human beings. One must have an appreciation of the values which are conserved by the law, and this can be produced only by assimilating the culture of the group which passed the law, or, stated otherwise, only if the group which passed the law assimilates the criminal. The negative act of prohibiting a thing is not sufficient because it is not constructive and does not promote assimilation.

Now, if one is to punish a man retributively, one must injure him. If one is to reform him, one must improve him. And men are not improved by injuries.

I need not refer to other minor evils of punishment. The whole idea that punishment reduces crime is based on the assumption of 'hedonism', meaning that people regulate their behaviour by calculations of pleasures and pains. Many criminals never consider the penalty. Many are psychopathic or feebleminded. Many, again, act under stresses of emotion. We have detailed the various causes of criminality at great length and have, perhaps, succeeded in impressing on the mind of the reader the present 'multiple factor' theory.

The old fallacy closely resembles that by Karl Marx in his theory 'That all human action, or at any rate all collective action, is based on the pursuit of direct material interest.' This is an idea which is easily infectious and which owes its success not to its truth but because it fulfils a wish and is supported by crowds and crowds of instances in ordinary life. Professor Murray thus refutes the idea :

> Karl Marx himself showed remarkable indifference to his own economic interest when he lived for years in great poverty writing an immense book for which no publisher was likely to pay him. Study his life and you can see that he was moved by all sorts of motives—by vanity, by ambition, by jealousy and ill temper, by intellectual interest, and by a magnificent unselfish idealism.

Any man, like Karl Marx himself, is actuated to doing things from a variety of motives,—all sorts of sentimental elements play their part.

If we turn from the individual to the community and consider the way in which it has reacted to the criminal, we will find not only the few values of punishment we have indicated influencing it but an admixture of all sorts of motives, active and passive, of revenge, of inherited prejudice, of vanity, etc., etc. Punishment has been a means of releasing the emotions and using up the propelling forces in an effort to get even with the particular individual who has disturbed the community. It would be far more satisfactory in the long run to use the interests, emotions, and wishes in a more controlled way to produce an eventual modification in the situation.

The criminologist will help the attitude of comparative leniency towards the criminal in the same way as Christ did towards the sinner. He has already shown the pervasiveness of crime and exposed the criminal hiding behind many a counter of respectability. To those alarmists who will cry in despair what will happen if these soft-hearted pleas prevail, he will retort by pointing to the wide range of evil-doing which, though punishable by law, is rampant among us ; to the appalling spectacle of pillage and parasitism, of corruption in every walk, of the moral bankruptcy in those who are themselves expected to mete out justice. He will argue equally well that if we can afford to leave much villainy unpunished we can afford to leave all villainy unpunished. The criminologist has shown that criminality is not so easily cured as is supposed. He has shown that what we call the native human reflex of vengeance is only partially natural but mainly 'conditioned' or 'acquired' and that the spirit of vengeance is satisfied variously. While Moses would have the transgressors not only exterminated but burned to ashes which ashes should further be drunk in in righteous indignation, Christ would ask him who is without sin to cast the first stone! While lunacy was a crime, the lunatic aroused as much indignation as does a criminal at present but the same society has, in course of a century or two, changed the attitude entirely for one of sympathetic attention. The same act may invoke in one a murderous reaction, in another a blow with a fist, and in yet another spitting or calling of names. When two hundred years ago, the performance of a 'suttee' was almost universally witnessed with marked approbation, the same thing will create an indignant reaction now. If we leave different times and come to different places in the same period, to our estimates enlightened, we find in Texas to-day the people are not satisfied with the prospect of knowing that the murderer or ravisher will be electrocuted inside a gaol, if found guilty by their own agency. They tear him off from the hands of the sheriff; pour oil or petrol over him; and burn him alive! If they do not pour oil or petrol over him, they want to make slow fire of him! If Landru could go to the guillotine unmolested in France, and his British prototype who drowned all his wives in their baths could be peaceably hanged in England, I have at the time of writing this, before me, the spectacle of a devastatingly cruel persecution of the entire jewish populace in Germany for a murder of *one* man by *one* youth ! All these will only show that our reactions are natural to only a certain extent and beyond that they are mostly conditioned and thus modifiable. The psychology of punitive justice is yet a field closed more or less to the laymen and the criminologist is only trying honestly to educate them.

The old attitude dies hard. Our religions and educational systems and our social codes were full of instances in which our moral indignation invariably took the form of punishment. These sadistic features in those spheres are fast disappearing. In the field of criminal justice, likewise, the procedure of science will slowly but surely replace the idea of punishment with one of 'treatment'. This method of approach also involves the emotions but not in their savage garb. The emotional process will involve curiosity, sympathy, hatred, etc., but all welded into a consistent working programme we have outlined in the concluding portion of the previous chapter.

The other great thing is to be convinced that, for social defence against crime, as for the moral elevation of the masses of men, the best measure of progress with reforms which prevent crime is a hundred times more useful and profitable than the publication of an entire penal code. We shall study 'prevention' further ahead.

PART IV

Criminal Justice

CHAPTER XIX

CRIMINAL LAW : PENAL CODES

Criminal Justice—Justice defined—Need for law felt—Law defined—Characteristics—Different penal codes—Ancient Egypt—The Code of Hammurabi—The Hindu Code—The Jewish Code—The Twelve Tables of Rome—The Muhammadan Criminal Law—The English Common Law—Continental Law—The American penal codes—The penal legislation of Pennsylvania—The Indian Penal Code—Need for its revision—Public interest in law—Law to be studied in schools and colleges.

I have denominated this part of the present work as one dealing with 'Criminal Justice'. We shall see in this part how the idea of rendering criminal justice took root in the mind of man, what devices he adopted to ensure just conduct on the parts of all those concerned with the administration of justice, and how he can possibly improve upon the methods even now employed.

The symbol of justice, as I said, is a pair of scales. We have had no better definition of justice than that by Ulpian, the great Roman lawyer and jurist, who, 1700 years ago, laid down that *justice represented the constant and perpetual* *wish to render every one his due.* 'Give the devil his due,' it would ever assert.

When speaking of the judges, I shall indicate how these respected functionaries have striven to render justice and what can still help them in discharging the onerous social service. Just as 'truth' is the goal of science and all intellectual pursuits, so is 'just conduct' the attainment to be striven for in the realm of human behaviour.

It seems to be commonly recognized that it is the duty of only the judge to render justice. This is an erroneous and injurious idea which has to be sternly countered. The machinery of justice, as we shall presently see, is a complicated one and every agency that holds any part in it has to conduct itself in the right and just manner. And not only in this limited range that man should be so acting but in all his affairs he should coolly and judicially deliberate so that all sides of a matter may be given due weight. The frame of mind that helps one in arriving at right conclusions with regard to matters of conduct is known by the 'judicial frame of mind' the nature of which I have delineated in the concluding portion of the section dealing with 'judges'. Much of human misery, of the mischief done by one to another, of the conflict between individuals and groups, would disappear from, or diminish in human society, if the judicial attitude were adopted widely as the philosophy of human conduct.

To begin at the beginning, we shall take up law whose stern but benign rule has gone a great way towards contributing to the human concept of justice that should obtain between man and man. Criminal law has prior reference to criminal justice.

It is an evolutionary study that we are pursuing and before we proceed further, let us recapitulate what we have already seen. We are by no means following the order of things as they are at present but recounting as faithfully as possible the evolution of ideas and concepts. We first studied the nature of the criminal, for he appeared on the scene almost as the first true man emerged. Primitive men were not very critical in their association of cause with effect ; they, however, came early in possession of a crude social ethics. There were commandments to follow and taboos to avoid. And individuals were there in their natural frailty to break these customary laws. These breakers were considered as sinners and criminals and were dealt with according to the prevailing practice. Punishment also arose out of the human instinct of pugnacity and emotion of anger. Thus, man came to act before he could calmly reflect. Conduct came to be regulated before man came to ask how best it should be.

It was next considered that there should be a set of laws recognized so that there might be a sense of proportion between the offence and the punishment. It was also necessary to warn individuals as to what they should and should not do and what reward and punishment their conduct would entail. The priests and medicine men, in modern senses the thinkers and the scientists, stepped in with their crude primitive religion and the prophets followed. The entire order,—the elders, chiefs, magicians, sages, and prophets all took into consideration the existing customary laws and modified and adapted them to the fresh requirements of the developing society. A particular sanctity was attached to, and miraculous powers were claimed for many of these according as their dispositions were considered original and meritorious.

Comprehensively thus, criminal law can be defined as *a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of* *the classes to which the rules refer, and which are enforced by punishment administered by the state.* The characteristics of these rules are thus :

1. Politicality. It may be argued that criminal law was at times promulgated by a sage or a prophet who commanded no influence politically at the time. In these cases, we may say that the laws thus promulgated were not recognized as criminal laws as long as they were not adopted by the political state. In theocracies, however, they came to be identified as criminal laws.

2. Specificity. This indicates that there should have been some sort of codification so as to demarcate a set of laws, however crudely defined. The body of laws has thus come to expand from a few commandments to hundreds of them.

3. Uniformity. This has been the case in almost all systems of criminal law. Deviations, such as in the Hindu laws preferentially treating the Brahmin class in many matters, do not matter inasmuch as these deviations themselves were in a way uniform. The case would be the same if within the general system of criminal law we allow different treatment of, say, juvenile criminals.

4. Penal sanction. There has always been a secular punishment threatened against breaches of such laws and executed in actual cases of breach. In many cases, however, as under priestly rule, a further punishment on the other side of the grave was threatened in addition. A law which does not provide a penalty that will cause suffering is regarded as quite impotent and in fact as no law at all. This coercive aspect of criminal law, however, is definitely on the wane at present.

5 The sanctity of the law has been attributed to different things at different times and Divine will, the will of the sovereign, nature, reason, history, public opinion, etc., have been invoked as the principle back of the specific laws. As a matter of fact, all these factors enter in varying proportion in the make-up of laws even to the present day. It is needless to say that reason will come to dominate these laws more and more.

No study of penal laws will be complete without a mention, however brief, of the different penal codes that have vastly influenced human conduct at different times and that will have to be taken into consideration for a long time yet to come. I give below short accounts of some of the best-known systems.

1. The criminal laws of ancient Egypt. The invention of writing was of very great importance in the development of human societies. We have already studied the primitive offences that were embodied in the customary laws and related to witchcraft, incest, etc. Writing helped the recording of agreements, laws, and commandments. It also made a continuous historical consciousness possible.

The elaborate religion of Ancient Egypt consisted in a complicated system of many gods—sun-deities, saviour-gods, and numerous divinities of animistic origin. Its ethical code, contained in the *Book of the Dead*, (Kitab-al-Mayyet), was of a fairly high order. Other ethical works preserved consisted in the Instructions of Ptahhotep (3550 B.C.) and Kegemni (3998 B.C.) and the life and teachings of Akhnaten who renounced the old gods and introduced a purified and universalized solar cult.

2. The Code of Hammurabi. Hammurabi was a historical personage living about 2000 B.C. He left a remarkable code of laws and letters which reflect the political and economic conditions of his age. The laws are far-reaching and precise, covering the whole of the then existing field of life. Moses, the law-

giver, must have been immensely indebted to Hammurabi.

3. The Hindu Code of Manu. The Hindu religion can be roughly said to be a faith of temples, shrines, deities of both sexes, and rituals of praise and prayer, the result of the growth of centuries from the primitive religion of the Aryan invaders of India, mixed with Animism.

The Hindu criminal law has an evolutionary character. From the humblest beginnings it advanced into a fairly developed system. The criminal laws laid down by Goutama, Vasistha, Apastamba and Baudhayana represent a very rudimentary state. With Manu (about 880 B.C.) the criminal law reaches a high stage of development. The offences dealt with are quite numerous. The punishments, though often brutal, show an anxiety to supress crime with a strong hand. Being the work of a Brahmin, it has treated the Brahmins in a preferential way. It is useless to criticize Manu's laws by modern standards. Many are the beauties, and a specially wise discrimination was shown by him in his treatment of the casual offenders and the hardened criminals. He said, "First, let him punish by gentle admonition ; afterwards, by harsh reproof ; thirdly, by deprivation of property ; after that, by corporal pain. But, when even by corporal punishment he cannot restrain such offenders, let him apply to them all the four modes with vigour." (Gour). Many, again, are the blemishes into which we need not go as the code is no longer in use.

The laws of Vishnu are much later and are supposed to have been composed about the third century A.D. thus about a thousand years later than Manu. These laws are less systematic but they breathe a more modern spirit. The severity of the punishments was greatly reduced, presumably under the influence of Buddhism.

A different stage of development was reached by Yagnavalkya and Kautilya. It is generally supposed that Kautilya was the prime minister of Chandra Gupta and the other possibly or nearly contemporaneous with him. In both Yagnavalkya and Kautilya, the laws have become more comprehensive, more reasonable and more humane.

The Hindu theory of punishment is mainly deterrent. In this it shares the standpoint of many other religions. The Hindu law-books make it abundantly clear that the main end of punishment is the maintenance of society by deterring the evil-minded people. Brahma is said to have created the rod of punishment out of his own essence. The fundamental idea was to strike terror into the heart of all potential criminals and so the punishments prescribed for certain offences were severe and almost absurd. Manu maintained that if there were no terror of punishment, nobody would enjoy the right of ownership in anything. Sin and crime were considered as the same. Men who were punished by the king were said to have been cleared of moral guilt. Punishment was thus both deterrent and purificatory.

4. The laws in the Hebrew Scriptures, especially the Pentateuch. The origin is ascribed to Moses, born probably in the 14th. century B.C. His codes, however, were adapted from ancient Egyptian laws, especially the code of Hammurabi. Critics dispute the fact of the Pentateuch having been the work of Moses at all. The Pentateuch, besides ancient legends, contain laws and rules dealing with morality and worship, not put in any precise order, and contradictory in many particulars.

Nothing can be more interesting than to hear what Moses, the Lawgiver, claims to have received from his Lord. The tone is that of one commanding another. It is peremptory, terse but precise. The commands take the forms of "must not."

Thou shalt not kill.
Thou shalt not commit adultery.
Thou shalt not steal.
Thou shalt not bear false witness against thy neighbour.

... ...

Thou shalt not covet thy neighbour's house, thou shalt not covet thy neighbour's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor anything that is thy neighbour's.

... ...

These are hard commands delivered amid 'thunderings, and the lightnings, and the noise of the trumpet and the mountain smoking'.

The penal code was further elaborated with reference to concrete cases thus :

He that smiteth a man, so that he die, shall be surely put to death.

And if a man lie not in wait, but God deliver *him* into his hand ; then I will appoint thee a place whither he shall flee.

But if a man come presumptuously upon his neighbour, to slay him with guile ; thou shalt take him from mine altar that he may die.

And he that smiteth his father, or his mother, shall be surely put to death.

And he that stealeth a man, and selleth him, or if he be found in his hand, he shall be surely put to death.

And he that curseth his father, or his mother, shall surely be put to death.

And if men strive together, and one smite another with stone, or with *his* fist, and he die not, but keepeth *his* bed :

If he rise again, and walk abroad upon his staff, then shall he that smote *him* be quit : only he shall pay *for* the loss of his time, and shall cause *him* to be thoroughly healed.

And if a man smite his servant, or his maid, with a rod, and he die under his hand; he shall be surely punished.

Notwithstanding, if he continue a day or two, he shall not be punished; for he *is* his money.

If men strive, and hurt a woman with child, so that her fruit depart *from her* and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges *determine*.

And if *any* mischief follow, then thou shalt give life for life,

Eye for eye, tooth for tooth, hand for hand, foot for foot,

Burning for burning, wound for wound, stripe for stripe.

And if a man smite the eye of his servant, or the eye of his maid, that it perish; he shall let him go free for his eye's sake.

And if he smite out his manservant's tooth; he shall let him go free for his tooth's sake.

If an ox gore a man or a woman, that they die: then the ox shall be surely stoned, and his flesh shall not be eaten; but the owner of the ox *shall be* quit.

But if the ox were wont to push with his horn in time past and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death.

And if a man shall open a pit, or if a man shall dig a pit, and not cover it, and an ox or an ass fall therein;

The owner of the pit shall make *it* good, *and* give money unto owner of them; and the dead *beast* shall be his.

And if one man's ox hurt another's, that he die; then they shall sell the live ox, and divide the money of it; and the dead *ox* also they shall divide.

Or if it be known that the ox hath used to push in time past, and his owner hath not kept him in; he shall surely pay ox for ox ; and the dead shall be his own.

If a man shall steal an ox, or a sheep, and kill it, or sell it ; he shall restore five oxen for an ox, and four sheep for a sheep.

If a thief be found breaking up, and be smitten that he die, *there shall* no blood *be shed* for him.

If the sun be risen upon him, *there shall be* blood *shed* for him ; *for* he should make full restitution ; if he have nothing, then he shall be sold for his theft.

If the theft be certainly found in his hand alive, whether it be ox, or ass, or sheep ; he shall restore double.

If a man shall cause a field or vineyard to be eaten, and shall put in his beast, and shall feed in another man's field ; of the best of his own field, and of the best of his own vineyard, shall he make restitution.

... ...

And if a man entice a maid that is not betrothed and lie with her, he shall surely endow her to be his wife.

If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins.

... ...

Thou shalt not suffer a witch to live.

... ...

Whosoever lieth with a beast shall surely be put to death.

I have quoted the above excerpts at some length because they are interesting. They represent the sincere effort of humanity at that age to codify the law. They are nicely and precisely worded, almost as if they were drafted in modern times and they could have been mistaken for modern laws by replacing 'if' by the invariable "whoever" of the Indian Penal Code with consequent modifications. The laws embrace all of the then existing field of human conduct, cattle in most cases taking the place of 'money' or 'movable property'. Capital offences preponderate. The law of retaliation has been stated although restitution has also been provided for. Murder, hurt, mischief, trespass, adultery, etc., have been provided against. The code, on the whole, stern if cruel, had a great influence on later religions and secular codes.

5. The Twelve Tables of Rome. The Romans bequeathed to the world the imperishable monument of Roman Law. The legal system which they spread upon Europe is still the foundation of much in the legal systems of the world. So far as criminal law went, we find in the Twelve Tables such minute differentiation of the offence of theft as manifest and nonmanifest. In the former case the thief was caught red-handed, or at any rate, with the spoil on his person; in the latter he was detected under any other circumstances. The manifest thief was condemned to death if he were a slave; otherwise, he lost his freedom and was made a slave of the owner for life. The nonmanifest thief was fined to the extent of twice the value of the goods stolen. Murder, perjury,

and the making of disturbances at night were dealt with as public offences and with various forms of capital punishment. Breaking a limb, on the other hand, was to be punished by retaliation. Theft, robbery, injuries to property, and injuries to the person later formed the four classes of delicts and still later these were further classified upon the manner of prosecution as (1) *Publica judicia* ; (2) *Extraordinaria crimina* ; (3) *Privata delicta.* The punishments were not such as could be termed equitable judged by modern standards but there, as evorywhere else, the field of penology *has* ever been in a chaos.

6. The Muhammadan criminal law. This is perhaps the latest law that claims as divinely inspired. We have to study this at some detail both because it can be definitely outlined as the entire literature is extant and is easily available and because it was being administered in India till the other day. The present writer can speak on the subject with some authority, having himself gone into the vast literature in original Arabic. He had occasion to qualify for the task by going in and obtaining a specific degree in Arabic scholarship.

It is needless to say that the fountain of Muhammadan ethics and civil and criminal law is the *Quran.* Since divine inspiration was claimed for it and believed in by the 'faithful', its laws in all the fields have been considered as sacred and immutable. The *Quran* was supplemented by *Hadith* (tradition), which consisted in a body of sayings and doings of the prophet zealously remembered by the companions and carefully recorded later. These traditions are given precedence over everything else in the matter of interpreting and supplementing the *Quran.* The third source of Muhammadan law was *Ijma* (agreed verdict of bodies of Muhammadan jurists). As even these three sources left a number of questions of law undecided, the fourth source same to be *Qiyas* (deduction). In this last matter scholarship and sanity conferred upon a few jurists leadership over others and the generality of the Moslem public. Thus, different schools of law came to originate. The Hanafi school owed its origin to Imam Abu Hanifa whose thought and writings predominate over a large part of the Islamic world, especially India.

Muhammadan law was being administered in India during the Muhammadan rule. The law was collated in a vast treatise in the reign of Aurangazeb by a body of learned jurists. The *Fatawai Alamgiri* is a monumental encyclopædia of Muhammadan law thus compiled. It is needless to say that this work was being referred to for decisions on points of Muhammadan law in the brief period between Aurangazeb's rule and the British rule, here.

The main characteristics of Muhammadan criminal law are the following.

(a) The entire law is based on religious sanction. In this respect it goes the way of all codes derived from revealed religions. The law is said to be divine in conception and promulgation and even the prophet from whose mouth the law came to be uttered did not claim any personal share in its formulation. The present scientific explanation of revelation and inspiration will affect the conception of the divine nature of these laws. It is no use entering into this controversial topic, especially as a rational code now obtains in India in supersession of all religious codes.

(b) In the conception of personal and social duties and obligations, sin, vice, and crime were blended together. Even personal conduct not affecting anybody else is sought to be regulated by religion by positive and negative rules of behaviour. This is a common aspect of practically all religions.

(*c*) Like all religions, again, punishments in Islam do not end in this life. A revisional judgment by God himself is considered as inevitable in a life to come and reward and punishment justly awarded are believed to be in store for all. Secular punishments are also very severe and even the death penalty has been laid down for some of the offences. It is apparent that deterrence was laid special emphasis on. The severity of this penal code cannot, however, be compared with that of the brutal laws of England that obtained, as we have seen, even the other day.

(*d*) As we have seen, the jurist is allowed to exercise his reason only when no decision can be cited from the Quran, Hadith, and Ijma. This cannot be helped under any of the religious systems. We all know of the Ecclesiastical opposition to rationalism and intolerance in Christianity and the same state of affairs obtains, or, at any rate, obtained under every organized religion. It is needless to say that the present trend is towards separation of the Church and the State. Modern Turkey has achieved this more or less completely and other Islamic States are slowly but surely drifting towards the same goal.

I have no space to devote to other ancient criminal codes. They all reflect the penal philosophy of the particular age and it will be unjust to judge them as well as those discussed above, according to modern standards. It must be borne in mind that whether it be Moses or Solon who gave the law, the law reflected the age more than the person in all cases.

We shall now examine the evolution of the legal systems of some other countries.

7. The English Common Law. This has developed from several sources. The history can be traced back to very remote times. The early laws were influenced by the laws of Rome. The Anglo-Saxons then made the principal contribution. Like every other system of punitive law, the principle of retaliation coloured the early English laws. Compensation was allowed in many cases and *Bot*, the Wergild and the Wite were the three well-known kinds of compensation. If the offender failed to pay the compensation, he was outlawed. Outlawry marked a step towards treating offences as public rather than private wrongs.

The development of the king's peace is an example of the influence of the monarchy upon the evolution of criminal law. Beginning with the requirement that order must be maintained in immediate vicinity of the king, the idea spread further and further till it covered the whole kingdom. Kingship further sanctified by the Church led to the recognition of the legal fiction that crimes are offences against the crown.

The English Common Law is an interesting example of the more or less spontaneous and unintended development of organized social control. Great advances were made in the reigns of Henry II and Edward III, the period of the Plantagenets, and in 1679 when the Habeas Corpus Act was passed. The Cromwellian period was rather turbulent. Even in Henry Fielding's times (1707-1754), law was very vague and harsh. Sir Robert Peel between 1826 and 1830 enacted a series of enlightened measures which abolished almost all the antiquated portions of law and greatly reduced the number of capital offences. About the middle of the last century a Royal Commission sat for several years over the question of law and procedure. The 'consolidated acts' of 1861 came into being and are still in force. Commenting on the evolution and nature of the English law, says Stephen ;

> It is founded on a set of loose definitions and descriptions of crimes, the most important of which are as

old as Bracton. Upon this foundation there was built, principally in the course of the 18th century, an entire and irregular superstructure of Acts of Parliament, the enactments of which were for the most part intended to supply the deficiencies of the original systems. These Acts have been re-enacted twice in the present generation—once between 1826 and 1832 and once in 1861; besides which they were all amended in 1837. Finally, every part of the whole system has been made the subject of Judicial Comments and Constructions occasioned by particular cases, the great mass of which have arisen within the last fifty years.

8. Much though I wish, I cannot spare space for an account of the development of continental criminal law. The reader is referred to "A History of Continental Criminal Law" by Carl Ludwig von Bar and collaborators who trace the evolution of such Law in Rome, Germany, France and other countries of Europe down to nearly the close of the 19th century. The work is carried down to modern times in another work by De Quiros titled "Modern Theories of Criminality". There are, of course, other treatises more or less known.

Roman Law, of which we have lately spoken, evolves erratically after the point at which we left it. The frequent use of death and other brutal penalties in the later Empire was due in a large measure to the caprice of the emperors and to the temporary purposes which were to be served by the criminal law. Reckless experiments were made with a crude theory of deterrence without reference to the evil effects of such a theory indiscriminately applied. The extreme forms the penal provisions took can be recalled by the barbarous penal provisions of the despotic Constantine against the crime of abduction, (molten lead was to be poured into the mouth of the nurses who had loaned their assistance) ; the severe penalties prescribed by Theodosius' Code against such trivial things as wearing of trousers in Rome or the wearing of long hair. Many of such crudities of the law were repealed by the better emperors, among whom Justinian will be remembered long. There is little of very great interest in Roman criminal law after Justinian.

The primitive Germanic criminal law was based upon the principles of vengeance and self-defence. Thus, in the "Germania" of Tacitus, mention is made as crimes of only direct offences against the community, such as treason, while the most heinous offence against the individual, viz, homicide, was mentioned as bringing about a condition of hostility from which the payment of some composition would procure release. I have no space to trace the later evolution of the Germanic Law.

The history of French Criminal Law can be taken up at the later middle ages, all that went before being of very little interest. The French practitioners sometimes followed Germanic or Roman traditions, sometimes they were prompted by the opinions of the Church. Thus, crimes like homicide, arson, battery, etc., were punished according to the Germanic traditions ; heresy and usury were dealt with according to canonical prescriptions. The erratic course of the criminal law at this stage should not detain us.

We come to the French Code of 1810. This Code was reactionary and reconstructive. It was influenced deeply by the utilitarian school and was in essence designed to secure the defence of society, by means of intimidation. In definitions of crimes, it was excessively severe ; it also went too far in many respects. Attempts were classed with the consummated crimes and the accomplices with the principals. Its penalties were very severe and almost barbarous. The legislative reforms which have since taken place, especially in 1832 and 1863, on the general revision of the code, modified punishments to some extent but, again, for certain crimes, punishments have been increased by several succesive enactments. As we shall see, the framers of the Indian Penal Code drew largely from this Code and erred likewise on some of these scores. The French Code had its merits too and as a work of codification, it was drawn with simplicity, clearness, and order.

I shall pass over other countries like Scandinavia, Netherlands, etc., and skip across the Atlantic for an account of American penal laws.

9. American penal codes : The Penal Legislation of Pennsylvania. In America, as elsewhere, and in general, the evolution of criminal codes has shown a tendency away from the close inter-relation of religion and criminal jurisprudence towards a steady secularization. It is to be remembered that the framers of the Indian Penal Code derived valuable assistance from the Code of Louisiana, one of the American States, which was prepared by Livingstone. It would be expected that that Code should have influenced the Indian Code to some extent. We shall, therefore, leave that Code alone and consider the nature and evolution of penal legislation of Pennsylvania because of its prominence in American criminal jurisprudence and prison reform, and because it admirably exemplifies

wellnigh every stage through which the development of American criminal law has passed'.

The first Criminal Code of Pennsylvania was the one introduced in 1676, which reflected the contemporary severe English and Puritan theories and practices with respect to the treatment of crime. About eleven capital crimes were laid down and for the lesser crimes fines and corporal punishments were prescribed. In 1682, this was replaced by the Quaker Code, which embodied the characteristic liberal attitude of the Quakers. The Quakers reduced capital crimes to only one, namely, premeditated murder, and substituted imprisonment for fines and corporal punishment. This criminal code, however, was shortlived. Over a difference in the taking of oath, the British Government reimposed a code very similar to the English code. In this Code (1718) crimes declared as capital were : treason, murder, manslaughter by stabbing ; serious maiming, highway robbery, burglary, arson, sodomy, buggery, rape, concealing the death of a bastard child, advising the killing of such a child, and witchcraft. Sometime later counterfeiting was made a capital crime and added to the list. This barbarous code obtained till 1776 when the colony separated from Great Britain and set up an independent government. It was not, however, till 1786 that an act was passed which came to carry out the reformation of the criminal code. The juristic conceptions of the framers of the act were expressed thus :

> Whereas, it is the wish of every good government to re-claim rather than to destroy, and it being apprehended that the cause of human corruptions proceed more from the impunity of crimes than from the moderation of punishments, and it having been found by experience that the punishments directed by the laws now in force, as well for capital as for other inferior offences do not answer the principal ends of society in inflicting them, to wit, to correct and reform the offenders, and to produce such strong impression on the minds of others as to deter them from committing the like offences.........(Barnes).

The act was far less severe in penal provisions although severe enough judged by modern standards. It is significant to note that as a result of progressive propaganda, it was declared as early as 1794 that,

> it is the duty of every government to endeavour to reform, rather than to exterminate, offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety,

and enacted that,

> no crime whatsoever, hereafter committed, except murder in the first degree, shall be punished with death in the State of Pennsylvania. (Barnes).

It must be admitted that this was a step eminently enlightened and perhaps unique so far as that age of the world went. Nowhere in the world, perhaps, especially at that age, had the death penalty been given such a *conge*.

The next stage was marked in 1826, when the legislature passed a resolution directing the appointment of three commissioners to revise the criminal code of the state. The commission made no attempt at a complete codification but confined themselves to 'lopping off relics of barbarism, giving a better definition of crimes and eliminating obsolete statutes'. The revision work was of a high order but the legislature failed to adopt it.

What was adopted in 1829 instead of it was a revision much less thorough and systematic than was suggested. The next revision was in 1860 which was far more thorough.

It is significant to note that it was about the middle of the 19th. century that penal codes in different countries were being revised and recast. The English common law underwent modifications and the Indian Penal Code was being prepared for adoption. The history and nature of the Criminal Code of 1860 of Pennsylvania is also interesting as they bear similar features in many respects as the Indian Penal Code.

The commissioners appointed to carry out the revision of the Penal Code of Pennsylvania were headed by Edward King, the most eminent of authorities on law of equity and for years President Judge of the criminal court of Philadelphia county, just as the towering genius of Macaulay was engaged in the codification of the Indian penal law. Both the codes were drawn up in an admirably systematic manner, in both was to be seen the consistent practice of prescribing only the maximum penalty for the several offences and leaving the minimum to be fixed and at the discretion of the sentencing court and in both was the monstrous and barbarous distinction between grand and petit larceny courageously abolished. In their long and able report the commissioners at Pennsylvania presented an elaborate exposition and explanation of their work just as the commissioners in India defended their positions by elaborate argument and exposition. The Pennsylvania performance drew admiration and the following comments among others were made in one of the leading law reviews of the time :

> The report, as a whole, is a most masterly production, and reflects infinite credit upon the ability, learning, industry, and faithfulness of the Commissioners, and will

prove an enduring monument to their fame. It is deserving of careful study in all its details, not only by those who are engaged in the practice of criminal law, but by the legislator, and by all who are interested in penal lagislation and the entire subject of crimes and punishments. Pennsylvania may now congratulate herself upon possessing a system of penal laws worthy of her advanced civilization, and adapted to the wants of her extended and varied popuation. (Barnes).

It is needless to say that the same thing could be said of the Indian Penal Code and as a matter of fact, even more glowing tributes *have been* paid to it.

The alleged perfection of both the codes, however, is a pure myth and we shall consider this presently.

9. The Indian Penal Code. This is the code now obtaining in India and we shall have to say more of it as we proceed. As I have just said, it represents Herculean efforts of great brains and has been a masterly production. We repeat that 'it is deserving of careful study in all its details, not only by those who are engaged in the practice of criminal law, but by the legislator, and by all who are interested in penal legislation and the entire subject of crimes and punishments'. I should stop short here as I have given a critical exposition of its provisions in Appendix B. I

have delineated its beauties and pointed out its shortcomings as far as I could in a general survey of the whole thing.

Apropos of this topic of the alleged perfection of any code revealed or reasoned, I must emphatically put it to the reader that, however much could a particular code claim excellence, it could never claim eternal validity. All that could be said in favour of a particular code held in popular esteem is that it was a laudable attempt suited to the relative condition and adapted to the level of criminal jurisprudence at that time. Neither Moses nor Solon could be expected to legislate for the entire humanity to come any more than could Judge King or Lord Macaulay. In stating this we are by no means belittling the achievements of these master-minds but only stressing the fact that criminal law like the moral code must move with the progress of mankind.

The tremendous progress of the social sciences in the course of the last hundred years would require that the Indian Penal Code be completely revised. Additions and amendmends have been made without lending the code any modernity. It was drafted under the aegis of a penal philosophy from which we have travelled far afield. I have attemped to point out in Appendix B some of the more glaring and interesting defects in the code. I have by no means exhausted all that could be said. A great many sections are badly drawn, others are obsolete ; many are inconsistent, many are in conflict ; there is much overlapping and undue elaboration ; the punishments are draconically severe and out-of-date ; arrangement of chapters and sections is in many cases illogical.

Although eminent jurists like Sir Hari Singh Gour have drawn attention to many of its defects, I know of no treatise which has treated the provisions of the Code from the angle I have done in the Appendix. I would ask not only those who are engaged in the practice of criminal law, but the legislator, the judge, and the student of crime and punishments to carefully go through the Appendix and help accentuation of public opinion in favour of a complete revision of the code. I need hardly state that this is the opportune time for one as India has just started out on a fresh political carrer. I have regretfully but decisively pricked the superstitious bubble of the code's alleged perfection.

Apropos of the subject of law and the interest of the public in it, it would be interesting to refer to what Lord Macmillan said sometime ago on "Law and the Citizen" in an address to the Royal Philosophical Society of Glasgow. He did not suggest that every citizen should be an expert lawyer but he did desire that every citizen should have general conception of the legal system under which he lived. Every branch of knowledge had a technical aspect which was the province of experts but there are general principles with which every educated person should be acquainted.

"You rise in the morning", said Lord Macmillan in course of the address, "and take your daily bath, but have you ever thought of the elaborate legal procedure which has preceded the simple operation of turning of the tap ?" He pointed out how land-owners had been compensated, the rights of millowners and of navigation and fishing had perhaps to be considered, wayleaves obtained, streets opened, and so on. The morning bath, the speaker added, was the only beginning of our day's contact with the law, for another whole code of law lay behind the provision of gas and electricity, whilst at breakfast we enjoyed the protection of the Food and Drugs Acts, and when we took tickets on the bus, tram or tube, we entered into contracts involving rights and obligations. A nervous passenger might imagine what would happen in anarchical conditions if a harassed conductor took a sudden dislike to him or a liftman proved implacably hostile. His Lordship suggested that it would be better if all realized something of what they owe to law and its benign if stern, rule.

As social intercourse increases in extent and complexity law tends to multiply. It forms the very basis of criminal justice. We are not conscious of its influence any more than we are of the air that we breathe. Whatever be the basis of our personal ethics, our social ethics must be based on a respect for law and order and there should be included in the curriculum of our schools and colleges some instructions in the general principles of law respect for which can thus be inculcated in the minds of our future citizens.

CHAPTER XX

CRIMINAL RESPONSIBILITY

Uniform applicability of law—Exceptions necessary—Nature of human reactions to crime—Excess of private reactions curbed by the state—Mitigating factors, again, considered—Different theories of criminal responsibility—Dr. Mercier's views—Factors determining turpitude—The provisions in the Indian Penal Code critically reviewed.

In the preceeding chapter we have seen that uniformity is a feature of law. This would ensure what we call the *rule of law*. That is to say that there should be no Lord or Commoner, Brahmin or Harijan, in the eye of law. Neither riches nor position should secure exemption from responsibility. Every section of law rightly, though curiously, begins with the invariable word, "whoever" and thus threatens and intimidates *all*.

This is all very well but there have been certain things which have secured exemption from liability without being grudged by society. This brings us to the topic of criminal responsibility which we shall study here, as we have done most cases, on evolutionary lines.

The question of responsibility was very little, if at all, considered in the early period when the offender was in most cases, annihilated. There was very little discrimination as between accidental offences and those by design. This lack of consideration extended to lower animals and even inanimate objects. Thus, we are amused to read of the axe which was tried in Athens for injuring a citizen and, when found guilty, was solemnly taken to the boundary of the city and thrown over as if on exile ; of the tree which fell on a man or the cart which ran over one, both of which were confiscated and sold for charity, in England only the other day. Similar instances can be read by hundreds and although they now excite laughter, they did in their times, claim all the solemnity of a recognized rite.

Such reaction on the part of mankind is not so very unnatural. Its nature and extent in the primitive stage were determined by the instinct of pugnacity and the emotion of anger. Later, however, the reaction was in many respects an unthinking imitation of what went before. Examples of our reaction and movement on similar lines may be counted by the score. When a mosquito bites you on the thigh, you at once go for its life without pausing to consider that it draws sustenance from a drop of blood or that the slight harm it has caused does not justify your smashing it by a quick blow of your hand. Even for a humming bird or a droning bee, or a barking dog causing disturbance at a long range, there are scores of people who will dash out mad and play hell with the poor thing if it can be caught or reached. When in the emotion of anger, one is least able to judge and act properly.

This feature of our nature came to be recognized with the dawn of political union when it was felt that such reaction was almost always in excess of necessity. The community then interfered and limited it to the needs of social defence and the ends of maintaining peace. The individual thus came to be supplanted by the state in securing redress for injury. The idea of proportion in retribution or retaliation came to be shaped on the well-known formula 'an eye for an eye, a tooth for a tooth'.

Gradually though slowly, some distinction came to be observed between a wilful and an accidental act. The mere commission of an act made one responsible for it but the responsibility was not of the same degree for an act done with knowledge and for one done without it.

When social control took the religious form, the individual came to be held responsible for having violated the divine law. God or some other sort of deity has been regarded usually as the creator of mankind and the controller of its conduct. Religious prescription in the case of infringement of rules of conduct has been punitive and expiatory. The Christian conception of responsibility for sins drew attention to the subjective side. God is the seer of the inmost sole and He is supposed to judge men according to purity or otherwise of their heart and, hence, the motive of the individual had to be considered in fixing liability. The other prominent Christian view that came to be widely accepted was that God gave man freedom of will which he abused in the service of the devil. The idea thus grew up that punishment should be directed only against a free act. Islam has emphasized this in the well-known dictum, '*Innamal amalo bin-niyat*', (acts are to be judged by intentions only). Responsibility was thus held as varying according as intention was or was not present.

The classical theory of responsibility was espoused by Bentham and others. I should refer the reader to pp 100—3 for an account of the rise of the classical school of criminology. Their theory of responsibility was based upon freedom of will and the doctrine of equal status for all men. The school maintained the doctrine of psychological hedonism,—that the individual calculates pleasures and pains in advance of action and regulates his conduct by the results of his calculations. It was thus considered necessary by them to attach definite amounts of pain to undesirable acts so that the prospective criminal could make his calculations ahead.

Punishment was to be uniform and Bentham even tried to work out definite mathematical laws for inflicting it.

The neo-classical school (see pp. 104) maintained that the above doctrine was correct in general, but that it needed certain modifications. Since children and lunatics could not calculate pleasures and pains, they should not be regarded as responsible. Arguing on the same lines, they extended partial exemption in other respects also, and to some extent took into account 'mitigating circumstances'. This was a great advance towards the modern conception of criminal responsibility.

The positive school denied individual responsibility *in toto.* They maintained that any crime was a natural act, just like a cyclone, or the striking of a snake. They denied the ethical desirability of punishments. The group must do something by way of precaution against crime but they maintained that such precautions should not be considered as punishment. Criminals that can be reformed should be reformed, those that cannot, should be segregated or killed, but it is most essential to modify the conditions which produce the criminal.

Among host of other theories, I may mention here the views of Dr. Mercier. (For his views on the nature of the criminal see Chapter III). Dr. Mercier gives an objective definition of responsibility and means by the term responsible 'rightly liable to punishment'. He says that to be responsible a man must 'will the act, intend the harm, desire primarily his own gratification ; furthermore, the act must be unprovoked and the actor must know and appreciate the circumstances in which it is done'. It would appear that his doctrine of responsibility is a bit too narrow.

As I have already remarked in indicating the possible sources of divergence of opinions with regard to the nature of the criminal (see pp 124—126), every writer on responsibility based his theory on his own conceptions and each theory has some element of truth. The classical conception did much to put an end to judicial vagaries. The neo-classical school came nearest to the modern conception. The Italian school insisted on individualization of each case and of penal treatment.

Dr. Mercier enumerates the following factors as determining the degree of turpitude : (The explanation and illustrations are mostly mine.)

1. The motive. The more purely selfish the motive, the greater the turpitude This is only in consonance with Dr Mercier's views that a criminal act with an altruistic motive is less heinous than one with a purely selfish one. For example, a murder committed with a political end should be less heinous than one on a private account. There is difference of opinion with regard to this question.

In democratic countries, political offenders are treated with more consideration than ordinary criminals. In theocracies, fascist states, and states under dictators, the very reverse is the case. Anybody contemplating any step against the regime is put down firmly. While the opposition in a democracy is considered as a boon, in other states it is considered as a menace. In the former, the people are anxious that the men in power may not become autocratic while in the latter the men in power are anxious that there is no overthrow of their regime. It is needless to say that we are in sympathy with the former so that state and Government, like all human institutions, may admit of adaptation, for the better and for all-round improvement. Of course, this is by the way.

2. The intention. This is a great factor in determining degree of turpitude. If a man does a criminal act with a certain intent, he is rightly punishable, not for what he succeeds in doing, but for what he intended to do. A pickpocket who thrusts his hand without being able to pick out anything is culpable to the same extent as if he had succeeded. This is recognized generally but is departed from in English law. The Indian Penal Code also provides for lesser punishment for 'attempts'. This seems to be equitable inasmuch as the injury actually caused is far less ; as also on the principle on which a harm only intended when nothing is done towards actually causing it, is not taken into account.

3. The temptation. The turpitude of a crime is universally estimated as in inverse proportion to the temptation under which it is committed, other things of course, being equal. A theft by a rich man is atrocious.

4. The magnitude of the injury. A murder is thus more heinous than rape and a rape than an assault.

5. The proportion of the injury inflicted to benefit sought. Selflovers are seldom respecters of proportion. Some would set fire to a house to roast an egg, so to say. To kill a valuable head of cattle to take away its skin is far more heinous than taking away a few pieces of hide.

6. The deliberation. An impulsive act on the spur of the moment is rightly deemed less heinous than one with deliberation. Premeditation and planning always aggravate an offence.

7. The alarm. Bentham attaches great importance to the amount of alarm produced by a crime. Hence the heinousness of dacoity.

8. The danger incurred by society or any part of it by reason of the crime. Hence the heinousness of laying explosives about, smoking in a jute godown, taking matchbox in a powder factory, and the driving of a car or train in a state of intoxication.

9. The record of the criminal. This is universally taken into account. In the Indian penal system first offenders are dealt with under section 562 Cr. P. C. and habitual or repeating offenders under section 75 I. P. C.

10. The frequency of the crime. Frequency or prevalence of the particular type of crime usually weighs with the judges. Stricter notice is often taken of bigamy where it is punishable and when it is widely prevalent.

This is connected with the idea of deterrence. It may just be questioned why prevalence should not rather go in favour of the offender. It only shows that he has succumbed as have many others to the same temptation.

It is needless to note here that many of the factors are well-known and do consciously or unconsciously influence the judge in awarding sentences. Some of these partially overlap with one another but the full list can advantageously be kept in mind by the judge so that an equitable sentence may ensue.

It is necessary to refer here to the General Exceptions enumerated in the Indian Penal Code in a special chapter. The framers observed that there were exceptions which were common to all the clauses of the code or to a great variety of clauses dispersed over many chapters. They said :

> Such are the exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium ; the exceptions in favour of acts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have, therefore, placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter.

The main principles which these exceptions illustrate are seven. They are :

(1) Where there is an absence of criminal intent (sections 81-86, and 92-94).

(2) Cases of accident (section 80).

(3) Mistake of fact (sections 76, 79).

(4) Act done by consent (sections 87-90).

(5) Triviality (sections 95).

(6) Acts done in exercise of the right of private defence (sections 96-106).

(7) Privileged acts (sections 77, 78).

I have no space to spare for the details of these exceptions nor am I called upon to enter into their discussion in this general treatise. I shall only make a rapid survey.

Absence of criminal intent is covered by an act 'likely to cause harm, but done without criminal intent, and to prevent other harm', this being illustrated when 'A in a great fire pulls down houses to prevent the conflagration from spreading'; 'act of a child under seven years of age'; 'act of a child, above seven and under twelve of immature understanding', the privilege of children between seven and twelve being thus qualified while that of children below seven unconditional; 'act of a person of unsound mind', lunatics thus being exempted from responsibility; 'act of a person incapable of judgment by reason of intoxication caused against his will', thus voluntary drunkenness being no excuse; 'offence requiring a particular intent or knowledge committed by one who is intoxicated', thus it being permissible to rebut a charge of murder by reference to drunkenness, but not so a charge of culpable homicide for the section declares that in spite of drunkenness the same knowledge shall be presumed. Other exceptions in this line cover 'act done in good faith for benefit of a person without consent', this being illustrated by *A* firing at a tiger which is carrying off *Z* knowing it to be likely that the shot may kill *Z* but in good faith intending *Z*'s benefit; 'communication made in good faith', such as a surgeon communicating to a patient his opinion that he cannot live so that the patient may settle up his worldly affairs although the patient died in consequence of the shock; 'act to which a person is compelled by threats', this provision being qualified with the limitation of cases to other than murder, and offences against the State punishable with death, and the threat being limited to one of instant death.

All these are really cases in which there is absence of criminal intent. No comment is necessary. It is, however, worth while to quote Sir James Stephen with regard to the last provision. He says:

> Criminal law is itself a system of compulsion on the widest scale. It is a collection of threats of

injury to life, liberty and property if people do commit a crime. Are such threats to be withdrawn as soon as they are encountered by opposing threats? The law says to a man intending to commit murder, if you do it, I will hang you. Is the law to withdraw its threat if some one else says, if you do not do it, I will shoot you?

Surely it is at the moment when temptation to crime is strongest that the law should speak most clearly and emphatically to the contrary. It is, of course, a misfortune for a man that he should be placed between two fires, but it would be a much greater misfortune for society at large if criminals could confer impunity upon their agents by threatening them with death or violence if they refused to execute their commands. If impunity could be so secured, a wide door would be opened to collusion, and encouragement would be given to associations of malefactors, secret or otherwise.

The second category covers cases of accident. This is also characterized by absence of criminal intent. 'Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.' As the object of criminal law is to punish only serious infractions of rules of society, it follows that criminal law cannot punish a man for his mistake or misfortune.

"It is a principle of natural justice and of our law," says Lord Kenyon, C. J, "that *actus non facit reum, nisi mens sit rea*. The intent and act must both concur to constitute the crime." (Gour).

An accident means an event that takes place without one's foresight or expectation. It must be understood that an act to be justifiable on the ground of accident must have been (i) an accident or misfortune, and (ii) unaccompanied by any criminal intention and further (iii) it must have been the outcome of a lawful act, (iv) which was done in a lawful manner, (v) by lawful means, (vi) and with proper care and caution.

The third category covers cases of mistake of fact. The principle is embodied in a common maxim : *ignorantia facti excusat ; ignorantia juris none excusat*. Ignorance of law is not recognized as an excuse and I have dealt with this topic in the concluding portion of Appendix B. The mistake of fact must be an honest mistake. A variation of this principle covers an act 'done by a person justified, or by mistake of fact believing himself justified, by law'. This is illustrated thus :

A sees *Z* commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes *Z*, in order to bring *Z* before the proper authorities. A has commited no offence, though it may turn out that *Z* was acting in self-defence.

The fourth category covers acts done by consent. Consent plays a very important part in the law of crimes. At one time a man's life and liberty, as well as the lives and liberties of his wife, children, and slaves were regarded as his private concern. Later on, the state came to claim a hand in these matters. There is again a clamour for recognition of a man's absolute right over his own life and body. I have dealt with these matters in connection with the exposition of the law of suicide and abortion in Appendix B.

These exceptions include an act 'not intended and not known to be likely to cause death or grievous hurt done by consent'. The doctrine of consent has been brilliantly explained by the law commissioners thus :

> We conceive the general rule to be, that nothing ought to be an offence by reason of any harm which it may cause to a person of ripe age who, undeceived, has given a free and intelligent consent to suffer that harm or to take the risk of that harm. The restric-

tions by which the rule is limited affect only cases where human life is concerned. Both the general rule, and the restrictions may, we think, be easily vindicated.

If *Z*, a grown man, in possession of all his faculties, directs that his valuable furniture shall be burned, that his pictures shall be cut to rags, that his fine house shall be pulled down, that the best horses in his stable shall be shot, that his plate shall be thrown into the sea, those who obey his orders, however capricious those orders may be, however deeply *Z* may afterwards regret that he gave them, ought not, as it seems to us, to be punished for injuring his property. Again, if *Z* chooses to sell his teeth to a dentist, and permits the dentist to pull them out, the dentist ought not to be punished for injuring *Z*'s person. So if *Z* embraces the Mahomedan religion and consents to undergo the painful rite which is the initiation into that religion, those who perform the rite ought not to be punished for injurying *Z*'s person.

The reason on which the general rule which we have mentioned rests is this, that it is impossible to restrain men of mature age and sound understanding from destroying their own property, their own health, their own comfort without restraining them from an infinite number of salutary or innocent actions. It is by no means true that men always judge rightly of their own interest. But it is true that in the vast majority of cases, they judge better of their own interest than any lawgiver or any tribunal which must necessarily proceed on general principles, and which cannot have within its contemplation the circumstances of particular cases and the tempers of particular individuals, can judge for them. It is difficult to conceive any law which should be effectual to prevent men from wasting their substance on the most chimerical speculations and yet which should not prevent the construction of such works as the Duke of Bridgewater's canals. It is difficult to conceive any law which should prevent a man from capriciously destroying his property, and yet which should not prevent a philosopher, in a course of chemical experiments from dissolving a diamond, or an artist from taking ancient pictures to pieces as Sir Joshua Reynolds did, in order to learn the secret of the colouring. It is difficult to conceive any law which should prevent a man from capriciously injuring his own health, and yet which should not prevent an artisan from employing himself in callings which are useful and indeed necessary to society, but which tend to impair the constitutions of those who follow them, or a public spirited physician from inoculating himself with the virus of a dangerous disease. It is chiefly, we conccive, for this reason, that almost all Governments have it sufficient to restrain men from harming others, and have left them at liberty to harm themselves.

An act 'not intended to cause death done by consent in good faith for person's benefit' and one 'done in good faith for benefit of child or insane person, by or by consent of guardian' are other acts of similar nature that have been exempted. Surgeons are thus competent to perform dangerous operations and guardians of children and lunatics may also have their wards operated upon or otherwise treated or confined for their benefit. It must be understood that an unqualified quack could hardly be excused, for, as the Law Commissioners remarked, 'it is not to be conceived that such a one could obtain the free and intelligent consent of any person to his performing upon him an operation dangerous to life but by misrepresentation ; and such a one could hardly satisfy a court of justice that he had undertaken the operation in good faith, for good faith must surely be construed here to mean a conscientious belief that he had skill to perform the operation and by it to benefit the party ; while the supposition is that he was unskilled and ignorant.'

The fifth category consists in acts causing slight harm, 'if that harm is so slight that no person of ordinary sense and temper would complain of such harm'. This legally recognizes the maxim *De Minimus non curat lex* (law does not care about trifles). The principle has been beautifully illustrated by the Law Commissioners themselves thus :

> As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past him, hurt to incommodate him by pressing against him in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is-desirable that they should do and suffer in turn, yet which differ only in degree from crimes.

The sixth category comprises acts done in the exercise of the right of private defence. 'Nothing is an offence which is done in the exercise of the right of private defence'. The Law Commissioners have specified the various extents to which people may exercise this right. They have rightly remarked that the people in India are too little disposed to help themselves ; that they submit most remarkably and with unusual patience to the cruel depredations of gang-robbers and to trespass and mischief committed in the most outrageous manner by bands or ruffians and that this discouraging feature made it desirous rather to arouse and encourage a manly spirit among the people than to multiply restrictions on the exercise of the right of self-defence.

The following are the chief features of the law relating to the right of private defence :

(1) Every person has a right, subject to certain restrictions, to defend his own body, and the body of any other person, against any offence affecting the human body ; the property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Self-help was the first rule of criminal law. "The right of private defence," wrote Bentham, "is absolutely necessary. The vigilance of Magistrates can never make up for the vigilance of each individual on his own behalf. The fear of the law can never restrain bad men so effectually as the fear of the sum total of individual resistance. Take away this right and you become in so doing the accomplice of all bad men." (Gour)

It is more than a right, it is a duty which flows from human sympathy. As Bentham says, it is a noble movement of the heart, that indignation which kindles at sight of the people, injured by the strong. It concerns the public safety that every honest man should consider himself as the natural protector of every other.

(2) This right has, on the principle referred to last, been extended by the Indian Penal Code so that even a stranger may defend the person or property of another.

(3) The right to defend one's property has been unnecessarily limited to the offences mentioned in (1). It is, however, understood that the right against theft must be deemed to exist against all offences *ejusdem genesis,* and so on.

(4) The right of private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, in certain cases of grave offence such as an assault reasonably amounting to one for committing murder or culpable homicide or grievous hurt, or rape, etc. In lesser offences the right extends to causing any other harm than death. In the case of property the right extends to causing death in certain grave offences, such as robbery, house-breaking by night, etc. In lesser offences any other harm can be caused than death.

(5) The right of private defence has been limited in a few cases. Thus there lies no right

of private defence against public servants acting in good faith under colour of their office, or having something done under their direction in the same circumstances, though such acts may not be strictly justifiable by law. The words 'strictly justifiable by law' should be noted. These refer to irregular acts only but not illegal acts. The law exempts acts of public servants in such cases merely to see that slight errors and omissions by public servants are not taken undue advantage of. Malafide or illegal acts by public servants are by no means exempted nor any act of theirs which reasonably causes the apprehension of death or of grievous hurt.

Another provision places a noticeable restriction upon a person's right of private defence. This lays down that 'there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities'. This is a rather confusing provision. When it comes to this, that our law does not permit rival claimants to enter in cold blood into battle to settle a dispute which can be settled in a lawful manner, it is well conceived. If, however, it is construed to mean that a man should take no action when another trespasses into his land and calmly settles down, on the assumption that the rightful owner can always eject the intruder through the public authorities and repair his losses by obtaining damages through the court, the provision would nearly set at naught all the positive encouragement towards self-help that the law has otherwise afforded. It may safely be asserted that when it is said that a person having time to have recourse to the authorities has no right of private defence, what is meant is that having the two alternatives equally good, the owner must choose the submission of the case to the authorities rather than enter the lists with his adversary. He is not bound to have recourse to the authorities at the sacrifice of his interest. He is not bound to abandon his property to the mercy of marauders, with a view to making application to the police for assistance.

The right of private defence has been further limited in extent generally by the provision that it in no case 'extends to the inflicting of more harm that it is necessary to inflict for the purpose of defence'. This is another confusing provision which may be stretched beyond usefulness. A person has no right to inflict disproportionately severe injuries on the pretext of exercising his right of private defence. If, however, it is presumed that every assailed person will have to measure out 'the pound of flesh' due to him with a perfectly balanced scale, the exercise of the right would become extremely hazardous. A reasonable view is to be taken. Thus where a person whose property had been frequently stolen lay in wait with a companion for the thief who appeared in the field at midnight and was struck with a heavy blow of *lathi* of which he died, Norman, J., held that the person did not exceed his right, observing, "No man finding a plunderer in his field by night in a place where others may be within call is to be expected to deal his blows very gently." (Gour). This is why the German Criminal Code had a provision to the effect that 'exceeding the limits of self-defence is not punishable if the perpetrator has so acted through confusion, fear or panic'. This is a sound provision but the spirit of it is also generally respected in India.

The seventh and last category of exceptions covers certain privileged acts. Thus 'nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law'; 'nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.' These provisions are necessary because judges and judicial officers might otherwise have been targets of unscrupulous attacks or organized opposition. Those officers who act under direction of the Judges have also to be protected likewise. At the same time the protection is not unqualified. A corrupt or tyrannical judge is a pest of the society, worse even than a cut-throat. The acts of the judges are thus subject to four qualifications :

(*i*) They (the Judges) must have been acting judicially ;

(*ii*) The acts must have been within their jurisdiction ;

(*iii*) If not, they must have believed that they had jurisdiction ;

(*iv*) If they so believed, they must have believed it in good faith.

On the whole, the framers of the Indian Penal Code were inspired by the ideas of the neo-classical school in more or less the same degree in which other codes of the last century were influenced. Liability was based on the freedom of will in Continental Europe, and on intention and knowledge in English and Indian criminal law. The doctrine of free will has for all practical purposes been sapped by the progress of science which has extended the concept of natural causation to all observed phenomena, including human behaviour. In fact, the behaviour of any individual is a resultant of a complex of many factors which are comprised in the inherited structure, the traits which have been acquired as a consequence of past environment, and the immediate environment.

In this latter sense, it may be doubted whether there can be such a thing as individual responsibility for conduct, or indeed human responsibility of any sort. Parmelee has argued that it cannot in the theological and metaphysical sense, but it can exist in the positive, scientific sense. While what we have said about human conduct above is true, it is also true that human organism is a complex machanism and centre of energy from which radiate stimulations and impulsions which may have far-reaching consequences. The organism is highly self-directing also and consequently we have every reason to regard the human organism as an efficient cause of the deeds which emanate from it, and the consequences of those deeds. Hence in a positive and scientific sense, we may regard the individual as responsible for his conduct

The new doctrine of resposibility will have implications that will make a penal code based on it vastly different from those already existing on old ideas and concepts. The sections in the Chapter of General Exceptions in the Indian Penal Code have been badly arranged. They require to be both re-stated and re-arranged.

CHAPTER XXI

MACHINERY OF JUSTICE

Sec. 1. The Judge — A prominent part in the machinery — The court — Status of the judge — Attitude — Appointment — Efficiency — Freedom — Checks — The separation of the judiciary and the executive — The sole job of the judge : 'find the truth' — The judical frame of mind.

We have long been in possession of some sort of machinery for the administration of criminal justice. Although private vengeance still finds expression in many cases, the wreakers of it are themselves, again, made accountable to society. As the method of our study has been evolutionary or rather historical, we shall trace developments and then discuss improvements where possible. In speaking of the machinery of justice, we shall first study the various parts and their functions : if we liken the process, in other words, to an organism, we shall study the anatomy and physiology first and then come to view the whole thing compositely.

We come to take up the main functionary first. The judge's has been an exalted office and mankind has come to look upon it with both trust and confidence. Its evolution has probably been like this. With the dawn of increased political consciousness and a concern for social welfare, the elders began to call on the parties to submit the cases to them. Before giving assistance to the injured party they might have found it advantageous to consider the merits of the case. Thus they performed a judicial function, however crudely. Then the function passed on to the chief of the tribe or the king. In Jewish history the rulers of the people before the establishment of the monarchy were called the judges. The Book of the Judges is so called because it recounts the history of the Israelite tribal chieftains who led the people in peace and war from the time of the settlement in Canaan under Joshua until that of the birth of the prophet Samuel. Later, the function was delegated by the king to judges who were mostly priests.

From the priests the judges have acquired a sort of hallowed sanctity. At first these priest-judges were not fettered by any procedure or definite penal codes. Gradually with the growth of law and procedure, secular judges came to be employed by the state. These came to function sometimes unpaid, sometimes underpaid, and now they are wellpaid and have, in most places, a secure tenure of office.

• The organization of the courts varies in different countries. Briefly speaking, the criminal bench of to-day may be divided into two classes, namely, the examining magistrates, and the judges who make the final decisions. In England and the United States the examining magistrate is also a police magistrate who has the power of summary trials in some cases. In England it is a general principle that except for certain minor offences, a person is entitled to a trial by Jury. The criminal courts comprise :

(*i*) The judges of the High Court sitting at Assizes for the trial of cases out of London ; and at the Central Criminal Court, ("The Old Bailey"), for the trial of those in and around London.

(*ii*) Courts of Quarter Sessions, are held for every country, by justices of the peace, presided over by a chairman.

(*iii*) Courts of Petty Sessions, consisting of at least two justices of the peace or a stipendiary magistrate.

(*iv*) The Court of Crimal Appeal having power to hear appeals against convictions and sentences.

In India, the various High Courts are the supreme authorities, directive, confirmative and appellate but the actual trials are held by the various magistrates in lower courts and the sessions judges in the sessions courts. The working of courts in India is fairly well-known. We shall speak of the jury when we take that topic up.

The attitude of the judge had been that of an arbiter between two private parties, when the procedure of accusation was in vogue. In non-cognizable and direct cases, he still retains that function and attitude. In the procedure of investigation he was the representative of society whose duty it was to conserve social interests. With the introduction of public prosecution, the judge sometimes acted as counsel for the defence, this function resulting from the temporary derangement of the balance between the two parties in a trial by the public prosecutor. It is obvious that this is not a proper function of the judge and something else will have to be done to restore the balance.

The personnel of the criminal bench is composed almost invariably of lawyers with some legal training. In the United States judges are generally elected and their terms are relatively short. There is a growing opposition to this system as it has been found that 'the judges in many places try to make the voters acquainted with them by disgusting self-advertisement, by attending banquets, weddings, funerals, prize-fights, and lodge entertainments, by sensational behavior on the bench, and in other ways'. Evidently the American system is no ideal.

The laws in England and Wales are administered by judges appointed by the Crown, who hold office for life, and cannot be removed save on petition presented by both Houses of Parliament.

The Indian system of recruiting magistrates and judges as civil servants with only a sprinkling of lawyer judges here and there leaves a cause for complaint from the side of the legal profession. While the lawyer judges still suffer from a deficiency of scientific training, the Indian judges and magistrates, at any rate most of them, suffer from deficiencies in both legal and scientific training. I do not for a moment suggest that these judicial officers do not acquire a working knowledge of law and procedure but once secure in service, there is a natural reluctance on the part of many to widen legal knowledge beyond what is actually required for practical purposes. Many lawyers, however, start with a fair amount of academic knowledge and are compelled likesuccessful members of the medical profession to keep abreast by refreshing the same in course of their practice.

Parmelee ably and pertinently suggests recruitment of judges from the ranks of the public prosecutors and public defenders. Judges so recruited would be free from most of the faults of the judges of to-day, and would have the technical knowledge which the latter lack. Such public prosecutors and defenders, again, should have been trained in criminal anthropology and sociology, psychiatry, and penology, in addition to the usual legal training. After such study, which, by the way has been introduced already in a number of European Continental law schools and colleges, the entrants should be fit to take up, according to merit, either public prosecution or defence. It would be advisable that they should take up both the jobs in turn, so that they may acquire wide experience, and so that this experience may avert the bias which now tends to develop either for or against the defendant through exclusive work either for the defence or for the prosecution. This is an eminetly sound proposition and may perhaps suit the conditions in India very much.

I must, however, state here that the personnel of the Indian criminal bench is by no means any failure. I am only suggesting that the above proposition would make for even better preparation of the judges to perform the important social function. The principle may be conceded and acted up to at once, the aim being complete adoption in the long run. For the present, however, an incentive towards mastering the judicial profession to the magistrates and judges may be given by making for an all-round training at the beginning of their careers and later, for widening their knowledge in law and other branches of criminology by holding out rewards and recognitions for 'proficiency', 'high proficiency', and 'degree of honour', etc., as is done for learning a new language at present, or similar other distinctions. There are undoubtedly a bright set that sit on the criminal bench to-day, and it would be none too hard for them to acquire knowledge in any branch, if only they care to do. As a matter of fact, the present contribution, ever so humble, is one from a layman who has only been interested in pursuing these studies.

So far as efficiency goes, the Indian judges fare very favourably. It goes without saying that either or both of the above suggestions, if accepted, will only make for their increased efficiency.

The old question of the authority of the judge persists, men having gone from one excess to another, from the unbounded authority of the Middle Ages to the Baconian Aphorism according to which the law is excellent when it leaves least to the judge, and the judge is excellent when he leaves himself the least independent judgment.

The paramount necessity for the judges rendering real justice will certainly be best served if the judges can decide with absolute freedom. They must be as independent in the matter of their judicial conduct as it is possible for a human agency to be. 'No fear or favour' should be their guiding principle. They should be impervious to public praise or blame. They should not only be shielded from political influence but should themselves think little of any extraneous power except their judicial superiors. Sir John Thom while inaugurating the eleventh United Provinces judicial officers' conference the other day, thus spoke on the duty of judges :

> I would say it is well to discourage blandishments, courtesies and attentions by executive officers and prosp-

ective litigants, and remember that the highest officer in the State, the most senior police official and the wealthiest citizen in the land are entitled to no greater consideration in your court than the humblest peasant....................
I have been speaking of civil cases but what I have said applies with equal force to criminal trials. In many such trials it appears to me that the accused is defended by inexperienced counsel who takes but little interest in his client even where his client is charged with capital offence. Such a state of affairs is absolutely inconsonant with the spirit of British Justice in that part of the Empire from which I come. A man charged with murder or indeed with any serious crime is almost invariably defended by counsel who are senior to and of longer experience than counsel for the Crown. If the accused is poor, no fee is paid or expected and counsel will frequently travel on most distant circuits at their own expense and perform this duty.

With regard to the equal treatment of all by the court, some outstanding examples in history can be found to show how even kings appeared before courts and were given no extra consideration. The great Caliph Omar had once to appear before court as a defendant and complimented the Kadi on his just treatment. It is undoubtedly true that the judiciary should not be too much under the influence of any one branch of the government. Tenure of office should be more or less permanent as it already is so in India. With regard to appointment which is generally made by the executive government, a method of choice will have to be evolved which will safeguard the judiciary from domination by extra-judicial agencies. The higher judges are already appointed in a manner that does not leave much room for comment. The judges in the lower ranks can at least in part be chosen by the judges in the higher ranks.

The system in India of the trying magistrates being under the control of the district magistrate who is the executive head in a district has been criticized as an anachronism of a great magnitude. The late Mr. R. C. Dutt had a great deal to say on the unwisdom of such a system and there has been popular agitation for a long time in favour of what is called the 'separation of the executive and the judiciary'. There is undoubtedly a volume to be said in favour of the agitation. There is nothing more pernicious to the good name of the administration than that there should be the slightest uneasiness in the minds of the people that even-handed justice cannot be obtained from courts.

The United Provinces Government have lately tackled the problem and devised a via media by placing the trying magistrates under a judicial additional magistrate, so to say, and effecting other changes practicable without amending the Criminal Procedure Code. The plan in short is that certain "Judicial Magistrates" will be appointed in each district for trying criminal cases. These officials would hold sittings in the same way as *munsiffs* and would not be called upon by district magistrates for consultation or help in any administrative sphere. The head in each district would be, as I have said, an additional district magistrate who would hear appeals from the decisions of these judicial magistrates. The judicial magistrates would have their work reported on by sessions judges and not by district magistrates.

Dr. Katju, the minister of justice, explained that the scheme evolved had three main purposes : to obviate the necessity for legislation ; to interfere as little as possible with existing administration ; and to avoid extra expenditure. A scheme for the separation of judicial from executive functions was drawn up in 1921 by the Stuart Committee. That report has grown out-of-date in some respects. Dr. Katju felt 'that the scheme which was now being worked out in detail would provide a practical solution to a problem which has been for long in the forefront of political demands of the Congress.'

The problem is a vast one. It has, however, got to be tackled. A modest beginning has thus been made but the problem requires, more than a patch-up treatment.

The main thesis of the present work has been public enlightenment, drawing attention to the vastness of the problem of crime, to the advances made in other countries in the matter of legislation and of administration of justice, and to the thorough revision that is needed of the substantive law of crimes itself. In Appendix B, I have critically reviewed the Indian Penal Code and pleaded for an up-to-date revised code. If that work is taken up, as it most certainly should be, the case of revising the adjective law, viz., the Criminal Procedure Code, will also have to be taken up automatically. It is for the enlightened public, the jurists, judges, lawyers and legislators, to accentuate public opinion in this direction.

The freedom of the judges should not, however, be meant to be absolute. No human being, however great, can be deemed perfect. The discretion or decision of a judge is' liable to be wrong for various reasons. Beside honest mistakes, judges may exceed their powers or violate the law. The autocratic position of a judge, especially in his courtroom, may tend to develop in him a pontifical manner and feeling of infallibility which should be carefully checked. This check is provided by superior courts who have wide powers of revision and who usually through mild rebukes correct such undesirable tendencies.

So far as the higher judges are concerned, there remains little cause for complaint as they are sufficiently responsible and have established a reputation for impartiality and even-handed justice. Rightly or wrongly a sting has been left in the minds of at least one section of the Indian public by what is known as the death-sentence on Nund Coomar. A great deal has been said with regard to the case and as Sir James Stephen claims to show that the case was tried fairly and patiently, the other side contends that it was certainly unfortunate that the judges themselves cross-examined, and that somewhat severely, the prisoner's witnesses and that the punishment of death was far too severe. That there was cause for some complaint may appear from the fact that in 1783 Impey was recalled and impeached for his conduct in the case of Nund Coomar. He was, however, honourably acquitted.

In this respect, Parmelee suggests the following :

> But it will still be necessary to maintain checks upon the judiciary. The bench can be organized in such a fashion that it can furnish its own discipline to a considerable extent. The upper ranks of the judicial hierarchy can supervize the work of the lower ranks. Public impeachment could be used in extreme cases, and would serve as a control over the supreme judges. Impeachment could be exercized most effectively ordinarily by means of a board of discipline composed of high executive, legislative, and judicial officials. Inasmuch as such a disciplinary board would represent all branches of the government, it would be impartial when exercizing its power over the judiciary.

Apropos of these checks and safe-guards, it is well worth mention how to achieve that precious and rare poise of mind which is known as the judicial frame of mind and which does not differ much from the scientific frame of mind. The judicial mind is a rare possession, for it distinguishes the possessor vastly from the common run or the great generality of mankind. Human behaviour, like animal behaviour generally, is guided by emotion and intellect. Unfortunately, however, despite what many people think or rather wish, our behaviour also is influenced more by emotion than reason.

This fact has been beautifully put and illustrated by Bertrand Russel in his well-known work, 'Principles of Social Reconstruction.'

This does not imply that the contention of those who claim that human behaviour is guided by reason is necessarily false but that, excepting the few who are in possession of the rare gift of a scientific frame of mind, the vast majority of mankind love and hate and live and act under the influence of emotions. One has only to look for examples to find them.

There is, first, what we call 'physiological induction'. This hasty process, as practised by animals, infants, and savages, is a frequent source of error. There is Dr. Watson's infant who induced, from two examples, that whenever he saw a certain rat there would be a loud noise. There was Edmund Burke, as Russel says, who induced from one example (Cromwell) that revolutions lead to military tyrannies. There are savages who argue from one bad season that the arrival of a white man causes bad crops.

Of such examples there is no end. We know the story of the blind men who went and handled an elephant and then described the whole elephant to be like the figures represented by the various parts each felt. We find hundreds of similar examples in daily life. It is amusing to see how people frantically conclude things after only hearing the most superficial outlines of cases. A man casually picks up a book from a table and finds it was written by one towards whom he is rather unfavourably disposed. Instantly he exclaims, "What's this fool writing about?" He goes on swiftly turning over the pages and eagerly looking for a weak sentence and naturally finds one which, divorced from its context and read aloud to the company, seems the very apex of absurdity. He throws it aside with a chuckle opining, "I never expected anything better from this fool of a writer." His friends in a passive mood accept his opinion and proceed to wonder what an enormous time has been killed by the writer over this twaddle. The gentleman opining here has committed two sins. He has concluded from insufficient data; he has approached the book with a bias. His companions have committed at least one. They have accepted an opinion based on a most flimsy ground.

The first sin, viz, basing conclusion on insufficient data, has been a besetting one. It has been committed by humanity in all ages. Men have deluded themselves with having found the 'truth', monopolized it, and given it finality. The result has been that their conclusions have been faulty and in many cases weak, because of the localized materials on which they were based having been naturally scanty.

A corrective to this has been found in what we know as the scientific method. I have described this method in section five of the Introductory Chapter. A practical application of this method in the field of criminal justice can be found in what we know as judging from 'record'. This ensures, and eminently rightly, that the case will be decided on its own merits, the pros and cons being all on record. Thus, other things being equal, the fuller the materials, the sounder will the judgment be.

This method is one that could most profitably be adopted in all extra-judicial matters also. It would be corrective of hasty conclusion. When one asks you what you think about such-and-such matter, it would be expected of you to ask in your turn for enlightenment on all aspects of it first. This is but done very rarely and one has to listen critically to the sweeping verdicts that are daily passed in drawing-rooms and at dinner-tables to realize how atrociously this golden principle is violated.

The other essential, closely allied to this, is that 'each case should be decided on its own merits.' To take an extreme example, this principle should require a judge not to be influenced in deciding the case before him by the fact that thousands of cases he has so far tried have ended in conviction or acquittal. Neither an unbroken series of convictions of similar cases prior to the one in issue should bias him against, nor one of acquittals for, the defendant. This is a golden rule which cannot be overestimated.

In dealings outside, man can also most profitably go by this principle. He does not usually do so. The *Burra-saheb* walking into office in a temper still plays havoc among his clerks for petty faults and the poor fellows, wretched and aggrieved, wonder if the *saheb* had not had a quarrel with the *Mem-saheb* or had not heavy bills to pay ! The clerks in their turns make the same mistake, swearing unnecessarily at the poor *duftry* or peon and when back home, at the servants or maids who may first accost them. A cycle of bullying and sub-bullying like this is daily going on and causing much unhappiness in human relationship. A mind which is stout and rightly poised refuses to succumb to such weaknesses and deals with every matter or person in the way each would justly deserve.

The second sin, viz, bias or prejudice is the mother of all unfairness and inequity. This besetting weakness of mind is almost a universal frailty and is directly opposed to all sense of justice. It has its background in our emotions. Although emotions are what make life interesting, they are a hindrance in the pursuit of truth and in the rendering of justice. Prejudice consists in like and dislike, proneness and aversion, favouritism and antagonism, or in other words an emotional reaction, positive or negative. Even pious and selfless men have seen no good in opponents. Even Napoleon, that stern apostle of efficiency, had expressly shown favouritism to his relations by imposing them on ruling nations. There are men who cannot believe a witness who declines to take an oath ; there are others who mock at the religious people and designate them as mere fools. Men like Macaulay would not see much good in the philosophy of the east ; there are hundreds of scholars in the east who would cry down the self-destructive materialism of the west. Unfortunately, and especially in India, prejudice, racial, sectarian, and otherwise, is keeping men and women from a sympathetic understanding of their neighbours. It is true no man can get away from his age, his upbringing, his religion or politics, the sum total of which, and other things, is a man's philosophy of life. In the light of this philosophy he judges men and things. But it is freedom from prejudice that will make for happy understanding of one another. It is perhaps a perfection never to be completely attained, but is certainly one to strive after which it should be the duty and privilege of humanity.

Emotional associations seldom correspond with collocations in the external world. They cause us to view the universe in the mirror of our moods, now bright, now dim, according to the state of the mirror. Those who judge by 'first impressions' are almost always wrong, those who do so by 'last impressions' are in many cases so, for such isolated glimpses are most likely to be associated with particular emotional moods. A sane and rational verdict should be the outcome of cool and unbiased considerations.

The judicial mind should be what is called the 'open mind.' We have already seen what an open mind implies, although we cannot accurately define it. The qualities of the judicial mind exclude both a readiness to believe and haste to disbelieve and strike a golden mean. In criminal cases a weakness may exhibit itself as readiness to believe the prosecution and to disbelieve the defence, a process assisted by the fact that the story of the prosecution is the tale first told. The counterpoise in the mind of the good judge is, however, his everpresent recollection that *he has yet to hear the other side.* His interim conclusions, if any, must always be provisional, continuously revised up to his hearing of the last word relating to the case.

The function of passing judgment is entrusted to the judge, whether he be sitting on the lowly Union Bench, be a Justice of the Peace, a Magistrate, a Jury member, or a dignified Sessions or a High Court Judge. He is behaving badly and unworthily if he abdicates his judgment in favour of anyone, however great, or of anything, however dear. A polite, and perhaps necessary, convention assumes the existence of a judicial mind in those selected to judge and nothing should be dearer to them than to acquire one if they are not already in possession of it. It needs a basis of intellectual honesty and firm character which can be acquired and kept up.

In the executive spheres of Government, much is done in a summary fashion, sometimes onesided and often uncontradictory. It is often forgotten that a subordinate officer who is asked to report on a matter and on whose report very grave issues may be decided, may be as emotional, biased, and indiscriminate as a man in the street. The so-called confidential reports and matters should by their very nature, be suspect, this not necessarily implying that one should distrust their authors but that the other side is hardly, if ever, adequately heard in such cases.

It is certainly convenient for one to depend on reports of others as long as one oneself is not affected adversely but a sense of justice will demand more responsibility to be undertaken by one who *decides*. It is anomalous that in one sphere of government, a chance or unguarded remark by a conscientions judge will be a cause for one party to move for a transfer of a case whereas officers in other spheres will have their uncontroverted reports sweeping all too wide. The goal to be attained is ostensibly the judicial method to be applied wherever possible, in the executive spheres also.

And even beyond that. I firmly believe that the judicial frame of mind is a requisite not only for the members of the bench but for every individual human being. In the humdrum daily life, in office, in business, in politics, and in practically everything else, where we deal with others we *judge* although we do not pass judgment. And perhaps more injustice is daily perpetrated than if all of our judges together were deliberately to prove unjust in relation to the cases before them. The welfare of the entire humanity hangs on whether we shall continue to live and behave like animals on emotional impulses or learn to discriminate rationally and judicially.

Sec. 2. The Jury—Public attention drawn to the problem of trial by Jury—Forms of the Jury—Essential features of trial by Jury—Merits of the system—Characteristics of the average Jury—Evils of the system—Criminologists on the system—Complications of a trial—Ferri's views—Barnes questions verdicts by the Jury—Garofalo refutes the suggestion that it is any Palladium of liberty—Stephen admits its weakness in the face of tyrannical power—Conclusion.

Public attention has lately been focussed on the subject of Trial by Jury by the Judicial Secretary of the Government of the United Provinces, who called for opinions on this interesting and important matter. Many people including judges, lawyers, police officials, and enlightened members of the public, have doubted the wisdom of trial by jury or with the aid of assessors. The Judicial Secretary expressed his belief that the reluctance of competent persons to act as jurors or assessors has resulted in that important public duty falling upon individuals drawn from a class of unintelligent people with neither the capacity nor the inclination to follow a case and to give an honest impartial opinion.

Nothing will help better understanding of the system than a causal investigation of its history.

We cannot, however, spare space for any lengthy review.

Various methods for finding the truth have been tried. The early devices for detecting guilt or innocence included (i) the Ordeal—the Ancient Teutonic mode of deciding a suspected person's guilt or innocence by subjecting him to a physical test such as plunging of hand into boiling water, safe endurance of which was regarded as a divine acquittal, (ii) the Compurgation—the trial and purgation by oath; and (iii) the Duel—or the trial by battle. The origin of trial by jury, ever so crude, can be traced also to a long past. The system may be said to be as old as civilization itself. In ancient Athens, the function was performed by Heliastes; the Roman jury sat over civil cases only. The later history is discussed very fully by Forsyth in his "Trial by Jury" published in 1852 and references occur in many other works. Illuminating researches of Brunner, Pollock, Maitland, and others, also throw considerable light on the history of the system.

The system was popularly regarded as an achievement of Alfred (849-901). Many of the reforms attributed to him are, however, legendary. Some ascribe it to Celtic tradition amalgamated with the principles of the Roman Law and adopted by Anglo-Saxons and Normans. One says it was brought by the Norsemen from Scandinavia ; another that it came from Asia through the Crusades. We may safely say that the form, however crude, may be traced in primitive institutions of practically all nations. The petty jury, as it is called, is the real jury of trial and it appears to have arisen as an alternative to trial by ordeal. In the reign of Henry III (1227-1272), the ordeal came to be abolished. His reign also led to further changes in judicial procedure and it is one of the chief landmarks in the development of the mordern jury system.

As to forms of jury, we can dispose of those that are outside our immediate study here. The Grand Jury, in English Law, is a body of men, varying in number between 12 and 23, who at the assizes and quarter sessions are summoned to inquire into the charges against suspected criminals. They decide whether there is or is not a prima facie case against each prisoner. If they think so, they return a true bill and the prisoner is sent up or committed for trial. The coroner's jury used to assist the coroner who by the Act of 1887 was to hold an inquest in cases of violent or unnatural deaths or of sudden deaths of which the cause was unknown. Since 1927 he need not have a jury unless it appears to him that death was caused by murder, manslaughter, or so. The Jury of Matrons used to give verdicts on suspected or alleged cases of pregnancy.

The essential features of the common jury trial are the following. The jury are a body of laymen selected by lot to ascertain, under the guidance of a judge, the truth on questions of fact arising in a criminal case. The number of men and women who are called upon to attend the hearing of a trial has been twelve. In trials before the High Courts in India, the jury consist of nine persons and in those before the Courts of Sessions they consist of "such uneven number, not being less than five, or more than nine, as the Local Government, by order applicable to any particular district or to any particular offences in that district, may direct". Ordinarily they consist of 5 and 9 persons according to the nature of the case tried. The verdict was to be unanimous in England while it can be 'divided' here. Their province is limited to the question of fact and within that province they are further limited to consideration of the evidence adduced before court. Even in the question of fact, they receive, although are not bound by, the directions of the judge as to weight, value, and materiality of evidence. They are selected from the locality to ensure independent local knowledge. The Indian Criminal Procedure Code provides that as each juror is chosen, his name shall be called and, upon his appearance, the accused shall be asked if he objects to be tried by such juror. The rest of the Indian procedure is almost common knowledge and I need not elaborate it here. The method of trial by assessors is also fairly well-known. The requirement for unanimity in English Law originated from the crude conception that truth depended on number of witnesses rather than character of testimony. Diversity was taken to imply perversity and the law applied harsh methods to secure unanimity. Jurors were not allowed to eat or drink except by leave of the Court and they might be carried about in carts until they agreed. These rough measures to secure a unanimous verdict have been softened later.

The system was supported as a bulwark of popular liberty against encroachments by the central power. One curse of modern political life comes from the fact that, as soon as a man has secured an office, he has his eye on another and his whole effort may naturally be to please the Government or the people who express themselves the most easily. Many judges do not rise to any great degree of independence and cannot defy popular clamour. The Jury are less bound by public opinion; their responsibility is divided; they are not as a rule seeking office; while swayed by the crowds, they are still more independent than the judges; and with the common men, the accused have a better chance. As public prosecution introduces the underlying principles of the procedure of investigation and throws the balance in favour of the society as against the individual, the jury may be expected to guard with zeal the interests of the latter. The judge may come from an entirely different environment and not be in a position to know the details of local customs or significance of local vocabulary; the jury would be in a far better position to decide which view of the facts is true, determine which meaning of the technical terms and words used in an unusual sense applies, decide whether general indefinite expressions do or do not apply to particular cases, and grasp other matters of act.

Characteristics of the average juryman in India are amusingly various. In the rural districts, the body is selected from a commonly inferior lot of people with very little education and far less training for accurate observation and correct judgment. To gauge the merits of the system, we have to take into account the average personnel.

I am afraid in so doing, the weight of opinion of criminologists will be against the system. The old idea seemed to have been that good men of an average type could not agree upon a wrong thing. Collect together twelve men of good moral character and justice will drop from heaven. It must be remembered that persons who can be bought and sold constitute a good many members. And their verdict is almost irresponsible! They have to say "yes" or "no" and are not called upon to give a critical appreciation of the grounds of their opinions. In this district, (Noakhali), the list of jurors, a formidable one, embraces men whose opinions on even trifles are not solicited by their colleagues and yet they decide fates of so many others. The danger of corruption is only surpassed by the ease at which they may be got at through appeals to sentiments or the now-prevailing communal spirit. There have been cases and cases in which the jury have divided communally.

Even assuming for these people scrupulous honesty, we must say that they are greatly hampered by ignorance and inexperience. They lack capacity to distinguish principal and relevant details from insignificant and irrelevant ones. Many grudge the time and energy they sacrifice for rewards none too alluring. H. E. Barnes in his work, The Repression of Crime, thus expresses himself with a touch of realistic humour :

> The jury, after a few days of bewilderment in the new and strange atmosphere, settles down into a state of mental paralysis which makes it practically impossible for a majority of its members to concentrate intelligently and alertly upon the testimony and the rulings of the Court. At best, it is in a state of abstraction and absent-mindedness. The farmer wonders whether his hens are being fed or his horses properly bedded down and the drummer bemoans his lost sales and "dates." Awakened from time to time from this stupor and these phantasies by unusual beauty, volubility, resonance or obscenity of the witnesses and testimony, the jurymen suddenly pounce upon some more or less irrelevant bit of testimony and forget or overlook the most significant facts divulged by the witnesses. Thus we have, in a typical jury trial, the testimony of the witnesses and the rulings of the judge presented to a group of colourless men drawn from the least intelligent elements in the population at a time when they have lapsed into a mental state which practically paralyses the operation of their normally feeble intellects.

Their ignorance engenders a suspicious attitude towards all concerned in the trial and opens the way for predilective influence by lawyers. A clever advocate can deceive a jury by fanning their suspicion or humouring their vanity. As Parmelee says, "Everywhere an oratorical character is given to the debates and a great deal of sentimental claptrap is introduced on account of the predominance of sentiment over reason in the jury."

They are influenced by the judge in most cases. To an yielding jury, the judge can carry his point through without the least trouble. So the so-called indifference to superior authorities or local knowledge of matters bearing on the facts do not count for much. Sometimes the attitude of the jury towards the judge influences the decision. If they lose confidence in the integrity of the judge, such as for his mistakes or peculiar predilections, the jury may indiscriminately oppose him. They may also be greatly prejudiced by appearances and personalities of parties or witnesses. They succumb to press and public propaganda. An orthodox jury may be hard on sexual offenders or one of merchants on embezzlers. The barbaric treatment by the papacy and the Clergy of liberal-minded writers or teachers is only too well-known. The jury often base their verdicts on penal consequences as in cases of murder because of the hanging that may ensue. Quite recently the Acting Chief Justice of Bengal came to comment on the number of perverse verdicts inspired by the reluctance of juries to convict a prisoner even on clear evidence of guilt.

The course of trial is complicated by a multitude of factors. Facts lie behind a haze of colourful and sometime dim background. None is pledged to give out the whole truth and only bits have to be carefully sifted out of complete chaos. For this sifting and continued attention a mind capable of scientific analysis and synthesis is necessary. "Hence the outcome is essentially this," says Barnes, "a body of individuals of average or less than average ability who could not tell the truth if they wanted to, who usually have little of the truth to tell, who are not allowed to tell even all of that, and who are frequently instructed to fabricate voluminously and unblushingly, present this largely worthless information to twelve men who are for the most part unconscious of what is being divulged to them and would be incapable of intelligent interpretation of the information if they heard it."

Various reforms have been suggested, adopted, and tried, to meet the inevitable complications that force attention from time to time. I can only touch upon a few.

The Geneva system provides for the passive participation of the judge in the deliberations of the jury. The judge remains present in the jury-room and does little beside assisting the jury in cases of doubts. Thus a minimum co-operation is only attained so as to help the separation of *fact* from *law* and, thus, of jurors from judges.

Another Geneva device followed in Belgium and now in France, is the combination of jurors and judges to determine the penalty after a verdict of guilty. This is to obviate the constant anxiety of the jury as to what sentence would follow. It is known in India how jurors are reluctant to convict in murder cases for fear of the accused being sentenced to death. Evidently this device enlarges the powers of the jury at the expense of the judge.

The complete combination of judge and jurors can be found in Portugal, Bulgaria, and Germany. The joint tribunal thus formed functions as a bench of judges. Evidently in this the experts and the lay co-operate. While the superior experience of the judges is available, the majority rule guards against coercion by judges.

Limitation of jurisdiction in view of the expensive, formal, and elaborate, procedure of jury trial has been advanced by some. This has been achieved in India by making only the grave offences triable by the court of sessions with the help of a jury. It has been suggested that the list of such offences should be cut down ruthlessly and only in trial of political crimes and of press offences should the system be retained.

Reduction of the numbers of jurors has already been achieved in India. Twelve was a mystic number which had no other significance. Five and nine are the numbers usually sitting in India.

The revision of the verdict on appeal is considered by some as an essential guarantee of justice. There is no reason why the verdicts of the jury should be accorded a conclusive finality, the members, as we have seen, being as fallible as ordinary men.

Improving the selection has again been felt as essentially necessary. It is a standing reproach that the class selected now is so low as to have given the whole system a farcical look. The Palermo congress (1933) recommended selection from all classes but of mental and moral capacity. Such double requirement is not easily satisfied. There is the eternal conflict between quality and quantity. Some of the qualifications urged are : (i) good morals ; (ii) education ; and (iii) respectability. The standards in these respects will naturally be different in different countries.

To guard against the complete irresponsibility of the verdicts it has been suggested that the jury will have to formulate the grounds of their verdict. This is an essential step against irresponsible verdicts but it involves the raising of the standard of the jurors considerably. The 'yes' or 'no' verdict would be dangerous in any sphere of human activity.

These are evidently meant to save the ancient system which in its original form has come to be considered as almost indefensible at the present times. The substitution of the jury by the assessors is yet another measure suggested. This was hotly debated at the 1933 Congress of Criminology at Palermo. No agreed solution was achieved. The assessor system has of late gained much ground and has replaced the jury system in the Russian Republic, in Italy, and in Austria. The assessor system would thus be a half-way house, the eventual goal being a tribunal of specialized judges, well-trained for their task and guaranteed by law in that independence of judgment which is supposed to be the special virtue of jurors. Ferri says:

> Even apart from technical notions which we consider necessary to the physio-psychological trial of an accused person, social justice certainly cannot be dispensed through the momentary and unconsidered impressions of a casual juryman. If a criminal trial consisted of the simple declaration that a particular action was good or bad, no doubt the moral consciousness of the individual would be sufficient, but since it is a question of the value of evidence and the examination of objective and subjective facts, moral consciousness does not suffice and everything should be submitted to the critical exercise of the intellect.

Ferri further advances, "two inevitable arguments of human psychology."

> First, the assembling of several individuals of typical capacity never affords a guarantee of collective capacity, for in psychology a meeting of individuals is far from being equivalent to the aggregate of their qualities. As in Chemistry, the aggregate of two gases may give us a liquid, so in psychology the assembling of individuals of good sense may give us a body void of good sense. This is a phenomenon of psychological fermentation, by which individual dispositions, the least good and wise, that is the most numerous and effective, dominate the better ones, as the rule dominates the exception........... Secondly, the jury even when composed of persons of average capacity, will never be able in its judicial func-

tion to follow the best rule of intellectual evolution. Human intelligence, in fact, both individual and collective, displays these three phases of progressive development, common sense, reason and science, which are not essentially different but which differ greatly in the degree of their complexity. Now it is evident that a gathering of individuals of average capacity, but not technical capacity will, in its decisions, only be able to follow the rule of common sense, or at most, by way of exception, the rules of reason, that is, their common mental habits, more or less directed by certain natural capacities. But the higher rules of science, which are still indispensable for a judgment so difficult as that which bear on crime and criminals, will always be unknown to it.

H. E. Barnes has been the most vehement critic of the contention that, in spite of all, the jury oftener than not, does bring the right verdict. It will be interesting to hear him on this point. He says:

> We have thus the spectacle of a "fixed" or "selected" jury, or one of colorless liars and illiterates deciding the matter of the corporeal existence, public reputation, property rights or personal freedom of a fellow-man upon the basis of prayer, lottery, rhetoric, debate, stubbornness or intimidation, in ignorance or defiance of legal rulings which they do not understand and of testimony, perhaps dishonest, which they have only imperfectly followed, and from an intelligent comprehension of which they have been diverted by

the fervid emotional appeals of counsel. If one were to protest against the accuracy of this picture by the counter-allegation that most verdicts are nevertheless sound and that such a result could scarcely be expected from so grotesque a procedure as we have described, the first answer suggested would be the query as to how one knows a particular verdict is a correct one. The majority of our convicted murderers go to the chair bawling protestations of innocence, while many obviously guilty ones are freed. There being under our system an opportunity only for a verdict of guilty or not guilty, by the mathematical laws of chance verdicts should be right in fifty per cent. of all cases, taking a sufficiently large number of cases and extending them over an adequate period of time. Surely there is no person of reasonable *IQ*, sanity and literacy who would contend that more than half of our jury verdicts are accurate, that the majority of those which are sound are such for any other reason than pure chance. An equally satisfactory result might be obtained far less expensively and in a more expeditious and dignified manner by resort to dice or the roulette wheel. I should be quite willing to defend the thesis that, in so far as certainty and accuracy are concerned, the modern jury trial is not a whit superior to the ordeal or trial by battle.

The above would seem to be a fitting counterblast to the unusually complimentary utterance of the late Lord Birkenhead on the topic. He said, "I cannot remember in the thousands of cases which I suppose I must have argued before juries, more than three in which I was absolutely certain that the juries were completely wrong." Not many in India would be found who would agree with Lord Birkenhead in this respect. Besides, the words *absolutely* and *completely* greatly limit the implications of his utterance.

Garofalo contests the suggession that the system is any Palladium of liberty and says :

> In England in the sixteenth and seventeenth centuries, in France during the Revolution and the Restoration, the jury has nearly always been the faithful servant of the most powerful ; it has succumbed to all kinds of tyrannies, to that of the throne as well as that of the populace.

Stephen, though an advocate of the jury system, thus admitted its weakness in the face of tyrannical power :

> They (juries) are also capable of being intimidated, as the experience of Ireland has abundantly shown. Intimidation has never been systematically practised in England in modern times, but I believe it would be just as easy and just as effective here as it has been shown to be in Ireland. Under the Plantagenets, and down to the establishment of the court of Star Chamber trial by jury was so weak in England as to cause something like a general paralysis of the administration of justice. Under Charles II it was a blind and cruel system.

Under part of the reign of George III it was, to say the least, quite as severe as the serverest judge without a jury could ever have been. The Revolutionary tribunal during the Reign of Terror tried by a jury.

Thus, if the personnel of the judges themselves would need so much enlightenment, as we have already seen, it goes without saying that the present jurymen would be considered as farcical judicial clowns rather than serious judges or assistants. In the interest of justice, truth, efficiency, and economy, this elimination of the jury should be speeded up. Its continued use in an indictment of our intelligence whether our excuse for continuing it be our belief in its efficacy or our inability to find a substitute for it. If a total abolition cannot be achieved immediately, it should be gradually reduced in use by restricting, as suggested by Lombroso, personnel to a list of fairly educated people of integrity or confining it to a small group of paid technicians, trained to consider evidence and make scientific deduction from it. In retaining the present form of jury, we have a return to the primitive confusion of social functions, 'by giving to any chance comer, who may be an excellent labourer, or artist, a very delicate judicial function, for which he has no capacity to-day, and will have no available experience to-morrow'.

Sec. 3. Prosecutors and defenders—Evolution of public prosecution—Lawyers : Pleaders and *Mukhtears*—Police court prosecutors—the case for a public defender.

The procedure of accusation was in vogue prior to that of investigation. The former developed out of private retaliation inflicted by an individual upon another for a wrong suffered. A state of private war between individuals thus came to exist. Although gradually some customary rules came to regulate such legal duel, a state of political consciousness and organization could not tolerate such private warfare. The procedure of accusation thus evolved. Private grievances came to be settled by perceful legal means. The duel of which we shall tell later still persisted in various forms here and there and has now almost come to cease.

The trial in the procedure we are now speaking of was a combat between two individuals. The king or the judge acted as an arbiter between two opposing parties. There could be no criminal proceeding without an accusation which was to be made by a private individual, the injured person or 'those of his lineage.' The examination into the facts of the case was public, oral, and contradictory so that each party could have an equal opportunity to state its case.

This was all very well so far as private parties are concerned although the more resourceful party was at a great advantage over the weaker one. The state of affairs could be likened, if only by a crude analogy, to a state of absolute 'free trade' in which the evil of stronger business units crushing the weaker ones may be easily seen. Furthermore, when crimes came to be regarded as injurious to the society, as well as to the individuals wronged, it became essential that all criminals should be prosecuted. In the procedure of accusation, however, this essential requirement could not be enforced on account of vagaries, apathy, etc., of the injured parties.

The remedy to this was found in the procedure of 'popular accusation' which empowered any person to bring an accusation in respect of a crime committed, even if he was not directly interested. Laws were also enacted forbidding the compounding of crime in respect of some grave offences. This, however, still left the evil of extortion or blackmail, etc., without a remedy. Measures were then taken against such danger by providing severe penalties for malicious accusation or prosecution. The method of examination in this procedure was not free from defects.

Its publicity often enabled the accused to tamper with or destroy incriminating evidence. The privilege of the accused not to testify if he so chose deprived the court of a valuable source of information.

Prosecutors and defenders as helpers of the complainant and the accused respectively had their origin perhaps in interested persons helping the respective causes. Written law gave the learned a superiority in knowledge of law and in skill in the intellectual combat which gradually came to be waged in a court of law. Of course, there is the legal fiction which assumes knowledge of law on everybody's part but the subject of law is too technical for even educated people to grasp fully.

Lawyers thus came to flourish. The profession of law drew able men from all ranks. Members of the public turned to lawyers for help in legal matters just as they did to medical men for matters of health. They perfomed public services of a high order. It is perhaps a universal human frailty that men are ready to believe the tale first told and better told although the truth may lie on the other side than the one presented. The pleaders bring out the merits of the case, *pro* and *con*, and thus help decision. The class of lawyers flourished in Rome and provided immortal geniuses like Cicero.

The procedure of investigation, or inquisitorial procedure, probably originated in Roman Law and was later adopted by the Catholic Church and applied by the canonical law. In the middle ages the powers of the Church expanded enormously and the inquisition which was founded by Innocent IV in 1248 was chiefly directed by Dominicans. The system gradually extented to Italy, except Naples ; to Spain, Portugal, Peru, Mexico, Goa, the Netherlands, and Germany. It was directed against words, actions, and assumed intentions. The tribunal sat in secret. Punishments were severe and the sentences were carried out by the civil authorities. The inquisition was responsible for much human misery and was ultimately suppressed in the nineteenth century.

The procedure of investigation is based on the underlying theory that the pursuit of criminals is of the utmost importance for society. Society has the right to commence a criminal process by making an investigation to determine whether a crime has been committed, and if so, by whom.

The judge in this procedure acts as the representative of the society, the investigator, and the prosecutor. This meant the accumulation of dangerous powers in the same hand and proved highly injurious to society when they were exercised by the church.

The examination is secret, written, and uncontradictory. The criminal process is no longer a contest between two personal adversaries. This system is not at all free from evils. In fact, judicial functions are hardly compatible with an active investigation. A compromise has generally been effected by relegating the function of investigation to an agency of the state which is now known as the police. In order to arrive at an impartial decision, the judge is invited to come with a fresh and unbiased mind to a consideration of the evidence after it has been carefully prepared by the police and which is then presented to him by the representatives of both sides.

In no country is either the procedure of accusation or of investigation in its pure form practised. Much variation has been introduced in both the procedures to guard against the danger of one abuse or another. In the English system the prosecution is in theory private, but it is now done in the name of the king, which is a recognition of the interests of society in the prosecution. The trial is public, oral, and contradictory. Beside the judge, the jury has a prominent voice. In France, the leading example of the procedure of investigation is to be found. As I said, however, it is by no means the pure type we have described above. The preliminary examination of the accused is made by a magistrate called the *juge d'instruction* whose position is similar to that of the Grand Inquisitor. The record of his examination in the form of depositions of witnesses is sent to the judge who is to preside at the trial. The presentation of evidence then is oral and public but almost entirely uncontradictory.

We have seen the evils attendant on both the procedures. The tendency has of late been to combine both so as to mitigate the evils as far as is practicable. The public agency for the pursuit and prosecution of criminals has come to be the police.

The police as investigators pursue the criminal, secure him, and collect whatever evidence there may be to connect him with the crime. If there is sufficient evidence to warrant his trial, he is sent up for trial. In the court, the court sub-inspector or inspector (police officers) conducts the prosecution just as a lawyer would do. In important cases and in trials before sessions courts, the public prosecutor who is a lawyer conducts the prosecution. The judge takes up an impartial position and hears both sides. The accused can defend himself or engage a lawyer. The old legal duel is thus fought out and in many cases, as is well-known, amusement is provided by both sides scratching each other for exposing sores each may be hiding.

This feature would, however, appear to be a necessary evil. It is impossible for one man to keep in mind all of the considerations on both sides, and to bring out all of the significant points in the evidence. The open duel serves this end to a great extent and thus the system of examination and cross examination and of the contradictory debate will have to be tolerated for the present.

This, however, brings us to topic of public defence. If the system outlined above is not going to be abolished, it should be the duty of the society to see that the person charged with a crime is not unfairly treated so far as the presentation of his case is concerned. The state pays for the investigating and the prosecuting staff who, in practice, are almost invariably bent on securing a conviction, regardless of the interest of the defendant. It is true in heinous cases a counsel is furnished by the state but this is only when the accused goes undefended. Furthermore, such counsel lacks the skill and experience of the staff opposing him. It would thus seem that the present system of *public* prosecution coupled with *private* defence in our criminal procedure does not maintain the balance between social and individual rights, and puts the rich and the poor upon a very unequal standing before the law.

This consideration will have to be weighed carefully here in India. The lawyers earn their living from their profession and, however generous, they can hardly be expected to defend parties free. I do of course visualize a large section of people who will wag their heads in despair and ask why the state should provide the luxury of a free defence to one who has chosen to violate the law. But they will soon soften down if they consider the following things in favour of the accused.

In the first place, the helplessness of the defendant in the face of an organized prosecution carried on by trained prosecutors should be evident to all who may be giving the slightest thought in this direction.

In the second place, the defendant himself is a citizen who has in his turn contributed to the state funds. If the prosecuting staff can be paid out of them, why cannot a defender be so paid when the defendant's innocence can yet be proved ?

In the third place, the criminal process is yet a sifting and winnowing process and by a legal-fiction, the defendant is presumed to be innocent till he is proved guilty. Why should he then at this stage be put to expenses and trouble, often so ruinous to him ? The truth of this contention will appear palpable when the huge number of persons arrested but released, or tried but acquitted is considered. In the case of the poor inflicting of heavy financial burdens which they cannot obviously bear means not only crushing them but also driving them on to the very crime for which they are sought to be deterred. It is obvious that justice should be even-handed so that the rich and the poor may be equally treated in the eye of law. It is unfortunately thought in many quarters that the scales of justice are heavily loaded against the poor. As Mr. James Curtis in a lately published book (the Land of Liberty) says, an old woman who bought potatoes for her Sunday dinner and seemed to mistrust the stall-holder's scales, opined bitterly, "Them scales of yourn, blimey they are just like the one outside the old bailey. They ain't bleeding true".

Since, then, the state has a two-fold duty of protecting the individual accused as well as of defending the society, it has been found advisable that there should be a public defender of the same standing as a public prosecutor. Lack of such a system greatly handicaps the poor while, again, the rich can disturb the balance by briefing the ablest brain for whom the public prosecutor may be no match.

It was Parmelee who first pressed the case for public defence so ably. It would be interesting to hear him arguing the case in a nutshell. He says :

> The present system of procedure can be improved in several respects by the introduction of public defence. In the first place, it is evident that the standing of rich and poor before the law would be equalized, for the poor would then have as efficient a defence as the rich. But still more would be accomplished by this reform. Society now claims the right to prosecute, but does little or nothing to defend. And yet no one, not even a rich person, ought to be forced to provide for his own defence. Especially true is this of the innocent victims of public prosecution. They have suffered the humiliation of being prosecuted, have been forced to face the possibility of being convicted, and have lost time and money in being tried for crimes of which they are ultimately acquitted. For this suffering and loss they ought to be indemnified by the state, as is now

being done in several countries. The least hatt society can do for them is to provide them with adequate defence. And yet they are left entirely to their own resources to secure this defence. If they lack sufficient resources to secure adequate defence, they are given the existing form of official defence, which, as I have shown, is in the main a failure.

It has been suggested that the introduction of public defence will be inevitably opposed by the legal profession. This, however, should not be the case as the system will create many positions as public defenders and the better class of lawyers could aspire to seats on panels of either the prosecutors or the defenders and a certain amount of the better kind of criminal practice would still remain.

We have already indicated the desirability of scientific training on the part of the public prosecutors and the defenders so that the personnel may interchange within the two groups and some of them can aspire to seats on the bench.

We may conclude this section with the interesting question as to what should be the attitude of the lawyer. His is a learned profession. He can do and has done immense social services. He has, however, been accused of malpractices, and a reactionary attitude generally. It is worth while disposing here of some of the charges against him.

Perhaps the bitterest indictment on the class of lawyers has been by H. E. Barnes in his book, The Repression of Crime. He says :

> Indeed, the present writer agrees with the thesis of Mr. George Jean Nathan as expressed in the *American Mercury* for February, 1926, to the effect that the so-called crime wave is due to no small extent to the antisocial ideals and low ethical standards prevailing among the members of the legal profession itself.

Barnes quotes Nathan who says :

> ....Unless I am uncommonly mistaken, the responsibility lies in a different quarter and that is the enormously increased number of shady, but shrewd and competent, shyster lawyers who have sprung up like mushrooms all over America. These fellows, out for notoriety and money and willing to do anything to get them, have opened offices in almost every other block of every American town of any size. And their trade consists in large part of taking on as clients gentlemen who have illegally gotten away with swag of one kind or another and in getting as much of it as possible for themselves. They have nothing to lose and everything to gain. If they can prove the innocence of their clients or even merely that their clients no longer have the swag in their possession (whatever may happen to the clients after that), they are down

in their luck if at least half of the cabbaged boodle doesn't find its way into their pockets. If, on the other hand, their clients go to the hoosegow, they are out only a little gab and time.

These are very unkind words and they would seem to be a counterblast to the equally one-sided contention of some lawyers who allege that the crime wave is due primarily to the 'coddling' of criminals and prisoners by 'sentimentalists', i.e., scientific students of crime. It would be equally wrong, as we have very well seen, to lay the present increase of crime to criminologists and prison reformers as to lawyers and *mukhtears*. Besides, the very 'increase of crime' is a loose expression and may have been made only more palpable by the increasingly efficient records that are being kept. The better class of lawyers in India practise on the civil side, the criminal side being mostly done by the *mukhtears*.

It is alleged that the criminal lawyers are everywhere reluctant to advocate far-reaching reforms in the criminal procedure and in court organization. They may be a bit conservative but I do not see why they should prevent progress in the light of the increased enlightenment of the human race. Theirs is a learned profession and the extent to which they keep on studying their profession compares very favourably with the extent to which even public servants do so. The present contribution is designed to stimulate interest of all classes to deeper studies of the human problems relating to the administration of criminal justice.

With regard to the coaching of witnesses, it is further alleged that lawyers often tutor the witnesses to tell lies. It may be true that in professional overzeal, many may do so just as much may the other side,—complainants, police officers, and prosecutors. The unfortunate duel before the court reminds one of the 'sporting theory of justice'. Large audiences are attracted and in some countries the criminal trials still are the principal amusement. Each side tries to win the case and takes advantage of every possible trick, surprise, and technical device. The prosecution begins by drawing attention to the inhuman brutality or the atrocious wickedness of the accused in the dock in having committed a heinous crime, however technical it may really be ; the defence urges first that the accused is not only completely innocent but has been most inequitiously and maliciously roped in, and then, if this contention seems untenable, that the accused, a man of inherent goodness, had only fallen a victim to unfortunate circumstances.

Mahatma Gandhi in his autobiography has given his views on the attitude a lawyer should take. He has, characteristically enough, urged that the lawyer must not deviate from the truth in any circumstances and should not defend a palpably untrue case. I do think, however, that a lawyer must look to the interests of his client and present all the factors in his favour without concocting any. Before human judges cases do suffer by default and no judge, however conscientious, can give full credit to an unrepresented case, without himself sparing the time and trouble to scan it fully.

Sec. 4. The investigator or the detective—A plea for a place for him in the machinery of justice—Adjustment of viewpoints necessary.

Formerly, as we have seen, criminal justice was rendered only to applicants who could name their adversaries, and further, could lead evidence against them. There was no agency to pursue criminals not recognized or known. Society has now come to look to the police to pursue offenders, known or unknown, and bring them to justice. Unfortunately in this process, the police have come to acquire an odium.

They are looked upon as haggling prosecutors whose sole delight lies in landing people in jail and in sadistically insisting on severe penalties. The thesis of the present author is to show the extreme absurdity of such a position.

The correct position will require readjustment of outlooks on the parts of both the public and the police.

It will be expected of society to change the angle of vision and look to the police for the treatment of crime not on antiquated lines of thought but on the present enlightened ones. The police should be a trusted agency to function in socially desirable ways, which ways should be based on the social sciences and progressive thoughts. Society can no more expect the police to share and observe antiquated views and practices than it can expect that the doctor should treat patients with the old hocus pocus of charms, incantations, and torture.

On the part of the police, a greater readjustment is indicated. It must bear in mind that it is a mere agency of the society and it will have to adjust its views to changing circumstances. If it is itself enlightened, as every progressive police force in the world should be, it will itself contribute to the thought and policy. If it is not, it will have to readjust its views on lines the criminologists indicate. In the part on 'Penology' we have seen how far ahead we have gone from the classical school of thought, nothing to speak of the brutal ways of thinking of the people of the mediæval times.

The aim in investigation is the *finding* of truth just as much as the aim of adjudication is the rendering of justice. Truth, 'which only doth judge itself, teacheth that the enquiry of truth which is the lovemaking or wooing of it, the knowledge of truth, which is the presence of it, and the belief of truth which is the enjoying of it, is the sovereign good of human nature.' An investigator will play false to himself if he allows any other consideration to creep in in the process of his investigation. It is unfortunately a human failing that the police do sometimes confuse the function of investigation with that of prevention. This confusion resulted in the past in the frame of mind in which some officers considered that demonstrative arrests make for prevention of crime, thereby finding an easy escape from their own responsibilites of preventing crime by effective patrol, surveillance work, and accurate detection.

It is not too much to hope that with the increasing enlightenment of both, the society will invest, and the police assume, more trust, so much so that the police will be considered, and feel proud to be, an integral part in the machinery of justice itself. The road towards winning for the police an increased measure of public appreciation would seem to lie in so raising the morale and the intelligence of the force that its members may be trusted in all circumstances to use their authority in preventive measures with discretion, and powers in matters of investigation with discrimination and justice. The Indian masses are generally law-abiding and drastic action which is not tolerated in more enlightened countries arouses little objection here, so long as there is no suspicion that the agency has been grossly unscrupulous.

In this country there is no private detective or investigator to help complainants. The sole authority and responsibility vest by law in the police. We shall study criminal investigation further ahead.

CHAPTER XXII

THE PRINCIPLES OF EVIDENCE

Early devices of determining guilt—The modern law of evidence—The doctrine of relevancy—Critical review of the principles and some suggestions.

The machinery of justice is designed to arrive at the truth relating to the facts of a case. The procedure of its working is by gathering, examining, and weighing evidence. Evidence may loosely be described as the sumtotal of materials on which a finding may be arrived at. We shall examine the nature of evidence further ahead.

Primitive man, as we have seen, inferred things crudely in the light of his own experience. The chief or some other important member of the community was called upon to decide between disputants and he might find it advantageous to consider the merits of the case. This was something like weighing evidence. He was possibly unfettered in his way.

Perhaps, again, the importance of the decisions or the advent of magical and religious ideas led men to adopt various other methods of securing and judging evidence. The aid of spiritual beings has frequently been invoked to furnish proof of guilt or innocence. The wager of law, the wager of battle, and the ordeal were some among the religious methods adopted. In the wager of law the proof was secured by means of compurgation. This consisted in a system of trial whereby an accused person could claim the right to summon personal friends to testify their belief in his innocence. It was thus primarily a test of the reputation of the accused among his friends and neighbours. The solemnity of the oath which was administered was supposed to prevent people from false testimony. The system prevailed upto the reign of Elizabeth.

The wager of battle consisted in duelling sanctioned and witnessed by the court. This battle took place between the disputants, or between their representatives, and God was supposed to give the victory to the side which was in the right.

Duelling for settling of disputes which cannot otherwise be solved, originated in France in the so-called days of chivalry, and lingers there still in a more or less serious fashion. It existed in England through mediaeval times, down to the days of George III. In Great Britain and

America duels are now looked upon as foolish methods of settling disputes, and are not countenanced by the law. Among famous duels fought was that by Hastings and Francis, the two implacable opponents, resulting in the latter being wounded. The other duel fought by famous men was the one by the Duke of Wellington and Lord Winchilsea in 1829.

The ordeal was the superstitious method by which the accused was set to handle red-hot iron, was cast into water, or made to partake of poison, the test being that if the accused was innocent, the deity would bring him successfully through the ordeal. If the accused was guilty, the deity was supposed to make *him* fail in the ordeal. The test was varied with boiling water, cold water, red-hot iron, glowing ploughshares, the cross, poison, etc.

'Ordeal by fire' is one of the most wide-spread of ordeals. An ancient Hindu code declares that 'he whom the flame does not burn is to be taken as truthful of his oath.'

The feats to be performed by the accused are minutely described in the Hindu ordeal books. We know how Sita, the wife of Ramchandra, is supposed to have proved her chastity by sitting unhurt inside burning fire.

One of the most remarkable stories of antiquity tells how the great religious teacher, Zoroaster, in order to confute his enemies, allowed melted lead to be poured all over his body and received no injury.

A form of the ordeal well-known in Germany and mediæval England was walking over glowing ploughshares. Most of these ordeals were carried out under the supervision of the clergy who were alleged to be in the know of tricks by which injuries could be avoided. As a matter of fact, there are jugglers and magicians even to-day to show feats like these. There are several cases on record of prisoners of high rank successfully vindicating their innocence by undergoing the ploughshare ordeal. Richardi, queen of Charles le Gros of France, Gunegonda, Empress of Germany, and Emma, mother of Edward the Confessor, were among them. Oviously ordeals are uncertain in their results and have thus been abolished.

The use of torture was developed to a high degree in the ecclesiastical courts, especially under the Inquisition. It was held that torture would make à guilty person confess, but not an innocent one. Torture has been abolished by law in all civilized countries, but it is still sometimes used illegally, as in the 'third degree' methods of the police. We shall speak of this further ahead.

It is not to be supposed that the administration of justice was in the past completely divorced from rational considerations. Solomon's judgment between two women who disputed the ownership of a baby is one of the widespread eastern legends which go to show that commonsense methods of arriving at the truth were also in use. The Islamic procedure to be observed by the *Kadis* was more or less elaborate. Rules of caution were laid down for proper appraisal of testimony.

The modern law of evidence has found the best expression in the English procedure. This was probably due to the fact that the English jury was originally a body of witnesses who gradually became judges of fact and who were comparatively ignorant of law and procedure. A body of more or less uniform rules of evidence came in vogue. The Indian Evidence Act is an adaptation of the English law. It was originally enacted in 1872 and amended later, on various occasions. The name of the eminent jurist, Sir James Fitzjames Stephen, who was the legal member of the Viceroy of India's

Council (1869—72), is associated with the enactment of the Indian Evidence Act as much as is that of Lord Thomas Babington Macaulay associated with the Indian Penal Code.

I shall only attempt an outline of the English and Indian law of evidence with which every student of crime and law should be acquainted.

Evidence is classified in several different ways. The most important classification is that of *direct* evidence, and *indirect*, *inferential* or *circumstantial* evidence. The former is derived from actual observation, or the testimony of persons who have a knowledge derived from actual observation. The latter is derived by inference from other facts which have been actually observed, or are established by testimony. The distinction will be apparent from the following illustration :

A is charged with having murdered B by dealing a severe *lathi*-blow. X deposes that he saw A strike B on the head with a club, and B fall down and die. This is *direct* evidence.

C is charged with having caused the death of D by means of arsenic. No one saw C administering poison to D, but the facts in evidence are (i) that D died of arsenic poisoning, (ii) that C had a motive to get rid of D, (iii) that he procured arsenic shortly before D's death, (iv) that he had the opportunity to administer it. This is *circumstantial* evidence or the evidence afforded by collateral facts.

Evidence is also classified as consisting of *material* or of *relevant* facts. A material fact is one which, when proved, decides one of the questions in the issue ; a relevant fact is one from which, when proved, a material fact may be legally inferred. Facts which are neither material nor relevant are excluded from consideration. The terms will be apparent from the following illustration :

A is accused of the murder of B. At his trial the following facts may be in issue (*material*) facts :

That A caused B's death ;

That A intended to cause B's death ;

That A received grave and sudden provocation from B ;

That A, at the time of doing the act, which caused B's death, was, by reason of unsoundness of mind, incapable of knowing its nature.

The doctrine of Relevancy, as is treated in the Indian Evidence Act, is comprised in various sections. I can only attempt a summary with short annotations where necessary. Relevant facts are thus found to consist of the following classes in addition to facts in issue, viz. :

1. Facts forming part of same transaction as facts in issue. Thus, in the first example, whatever was said or done by A or B, or the by-standers at the beating, or so shortly before or after it as to from part of the transaction, is a relevant fact.

2. Facts which are the occasion, cause, or effect, surrounding circumstances of, or opportunity for facts in issue or relevant facts. Thus, marks on the ground produced by struggle at or near the place where B was murdered, are relevant facts.

3. Facts showing motive or preparation, and conduct of parties under certain circumstances. Thus, the facts that A murdered C, that B knew that A had murdered C, and that B had tried to extort money from A by threatening to make his knowledge public, are relevant.

4. Explanatory, introductory, corroboratory, contradictory, identificatory, and chronological facts, and facts showing the relations of parties. Thus, the circumstances leading upto the main incident of the story of the murder will be relevant.

5. Facts which are inconsistent with, or which make the existence or non-existence of facts in issue or relevant facts highly probable or improbable. Thus, the fact that on the day of murder, A was at a place so distant from the place of occurrence that it would be highly improbable that he committed the murder, is relevant.

6 Acts or statements of conspirators. Thus, the fact that A requested C in writing that C should come and join A in the murder on the particular day, is relevant.

7. Transactions or instances in which rights or customs were created, claimed, modified, etc. This has been illustrated in the Act itself as follows :

The question is whether A has a right to a fishery. A deed conferring the fishery on A's ancestors, a mortgage of fishery by A's father, a subsequent grant of the fishery by A's father, irreconcilable with the mortgage, particular instances in which A's father exercised the right, or in which the exercise of the right was stopped by A's neighbours, are relevant facts.

8 Facts, forming exceptions to the rule which prohibits admission of facts similar to, but unconnected with facts in issue or relevant facts.

(a) Facts showing existence of state of mind, body or bodily feeling. Thus, in our example, the fact that A had previously been trying to murder B, is relevant.

(b) Facts showing existence of system. This is illustratad in the Act itself thus :

A is employed to receive money from the debtors of B. It is A's duty to make entries in a book showing the amounts received by him. He makes an entry showing that on a particular occasion he received less than he really did receive. The question is whether this false entry was accidental or intentional. The facts that other entries made by A in the same book are false, and that the false entry is in each case in favour of A, are relevant.

(c) Facts showing existence of course of business. This is also illustrated in the Act itself thus :

The question is, whether a particular letter reached A. The facts that is was posted in due course, and was not returned through the Dead Letter Office, are relevant.

9. Facts forming exceptions to the rule against the admission of Hearsay Evidence.

(a) Admissions and confessions, when allowed to be relevant. We are concerned more with confessions in criminal cases. A confession is only one species of admission, viz., that which consists in a direct acknowledgement of guilt in a criminal charge. The acknowledgement must be in express words, by the accused in a criminal case, of the truth of the guilty fact charged or some essential parts of it.

Confessions may be divided into two classes: judicial and extra-judicial. Judicial confessions are those which are made before a magistrate; or in court, in the due course of legal procedings; and it is essential that they be made out of the free will of the party and with full knowlegde of the nature and consequences of the confessions. Hence the prescribed formalities in recording confessions by magistrates A Judicial confession also includes the plea of guilty made in open court to an indictment Extra-judicial confessions are those which are made by the party elsewhere than before a magistrate or in court. Confessions made to police officers are not admissible.

(b) Previous statements, regarding certain matters, of persons who are dead, or cannot be found, or who are incapable of giving evidence. This provides an exception to the general inadmissibility of hearsay evidence. Dying declarations are relevant according to this provision.

(c) Statements in books of account, public records, maps, charts, plans, Acts, Gazettes, or law books.

(d) Judgments, when allowed to be relevant.

(e) Report of subordinate Magistrate.

(f) Deposition of Medical witness.

(g) Chemical Examiner's report.

10. Opinions, when allowed to be relevant. This provision admits the opinions of experts and others in special circumstances. Thus, in our example, if the question is whether B was murdered by poison, the opinions of experts as to the symptoms produced by the poison, by which B is supposed to have died, are relevant.

11. Character, when allowed to be relevant. In criminal proceedings the accused can always give evidence of his good character. The fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant. It has been further explained that this section does not apply to cases in which the bad character of any person is itself a fact in issue and that a previous conviction is relevant as evidence of that character.

12. Previous statements of a witness regarding the same facts which are admitted either for the purpose of impeaching his credit or for the purpose of corroborating him.

13. Documents admissible in England or Ireland in proof of particular facts.

The whole point in indicating which evidence is admissible and which is not is to guide the machinery in expeditiously arriving at the truth. The rules are wide enough to cover necessary points in favour of both the prosecutor and the accused. It is open to a private investigator to please himself by wading through useless materials but the courts cannot afford to waste time in hearing homilies.

I do not wish to enter into other technicalities of the law of evidence but shall refer in brief to the most important features of it, so far as criminal cases go.

(1) The onus of proving everything essential for the establishment of the charge against the accused, lies in the prosecutor. The accused may or may not enter into his defence. The law presumes the accused to be innocent until proved to be guilty. It is *prima facie* the duty of the prosecution to call all witnesses who possess a knowledge of material facts ; and the only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. Failure to produce such witnesses, in the absence

of the above reason, gives rise to the irresistible presumption that, if called, they would not have corroborated the prosecution story. No such corresponding inference can be drawn against an accused.

With regard to the principle enunciated above, a few observations are called for.

(a) It is only natural that the complainant who has the public agency of the police in his favour and the prosecuting officers of the state (except in direct noncognizable offences) should be able to present his case convincingly. The accused with his limited resources has been shielded from imprudent exposure of himself by feeble defences. He is of course at liberty to do so if he chooses to. It is evident that the testimony of the accused should be valuable in every case and, as Parmelee suggests, it should be introduced in the interests of justice. The accused should be required to testify, or, at any rate, if permitted to refuse, such refusal should have weight with the judge. It is doubtful if this change would remove any justifiable protection from the accused, for if he is innocent his testimony should help rather than injure his cause, while if he is guilty there is no reason why he should not incriminate himself. I entirely agree with Parmelee in this but shall prefer postponing the change till a 'public defender' is engaged by the state to help the accused. I have already discussed the need for the institution of this new office.

(*b*) It was also for the protection of the accused that the 'presumption of innocence' grew. On the European Continent there has never been any presumption either of innocence or of guilt. The presumption has strengthened the position of the accused too much, and has made it too difficult to convict the guilty. As Parmelee, again, suggests, this presumption should be abolished, at least in so far as it influences procedure, from the theory of the law. I also agree but should wait till the police have changed their viewpoint from one of a zealous prosecuting agency to one of an integral part of the machinery of justice itself. I have stressed my point in the previous chapter.

(2) There must be clear and unequivocal proof of the *corpus delicti.* This is a dictum which serves as a very good rule of caution. It will be interesting to read more of it.

The expression *corpus delicti* literally means the 'body of the offence', i. e. the facts which constitute it. Legally it means the crime apart from the criminal, the deed apart from the doer. In other words, that the offence alleged has at all occurred will first have to be proved before who has done it can be considered. In the case of Pritchard, a medical practitioner, who was convicted in 1865 of poisoning both his wife and his mother-in-law, Lord Justice Clerk charged the jury as follows :

> There are three things of which you must be satisfied upon the evidence. In the first place, that the deceased died by poison ; in the second place, that the poison was wilfully administered for the purpose of destroying life ; and in the third place, that it was the prisoner at the bar who so administered or caused it to be administered. If the evidence is defective in any one of these particulars the prisoner is entitled to an acquittal. But if, on the other hand, you are satisfied of these three things then there remains nothing for you but the stern and painful duty of conviction.

Hale laid down, "I will never convict any person of murder or manslaughter unless the fact were proved to be done, or at least the body found." This rule was found to be inpracticable, especially in cases of murder on the high seas where a body is never found. As a matter of fact, the issue was thrashed in an actual case of murder on the high seas where a mariner threw the captain overboard and he was never seen again. The prisoner was convicted of murder although the body of the captain was not produced. Death was presumed from the facts related.

It has been rightly held by another authority that 'the *corpus delicti* must, like anything else, be proved by the best evidence reasonably capable of being adduced, and by such an amount and combination of relevant facts, whether direct or circumstantial, as to establish the *factum probandum*, to the exclusion of every other reasonable hypothesis'. Lord Tenterden observed to the same effect : "It is only necessary that you should have that certainty with which you transact your own most important concerns in life".

The hackneyed maxim that it is 'better that many guilty persons should escape than that one innocent man should suffer' has been stretched beyond usefulness. It has become a shield and cloak for guilty persons. Many of these escape punishment under this cloak. A balanced maxim, if there need be one, should be : No innocent person shall be convicted ; neither shall a guilty person escape punishment. Society will have to devise ways and means to ensure these requirements. I shall have a lot to say on this in the next portion of the book.

This was, as a matter of fact, stressed in Muller's case where his lordship observed :

> To make a comparison between convicting the innocent man and acquitting the guilty is perfectly unwarranted. There is no comparison between them. Each of them is a great misfortune to the country and discreditable to the administration of justice. The only rule that can be laid down is that in a criminal trial you should exert your utmost vigilance and take care that if the man be innocent he should be acquitted, and if guilty that he should be convicted.

(3) The evidence against the accused should be such as to exclude, to a moral certainty, every hypothesis but that of his guilt of the offence imputed to him.

(4) The hypothesis of delinquencies should flow naturally from the facts proved, and be consistent with them all.

(5) Presumptive evidence ought never to be relied on when direct testimony is wilfully withheld.

(6) In cases of doubt, it is safer to acquit than to condemn.

The above are sound principles and they ensure that no innocent man is convicted. In this aspect of the principles, there is very little to comment. I shall, however, refer to some evils in this line still remaining unmitigated.

Although I find no authority having thought or at least expounded so, I feel tempted to suggest an improvement in the other side of the case. I have only lately suggested that the balanced maxim, if there need be one, should be : No innocent person shall be convicted ; neither shall a guilty person escape. The first part has been adequately safe-guarded but the second part has only been feebly achieved. The percentage of detection to the number of cases occurring is everywhere ridiculously low and that of conviction is more hopelessly so. It is usual for the judges to acquit the accused if the prosecution fails to prove the case against him. This is all very well so far as the particular accused is concerned. They also deal with the complainant if he has been found to have fabricated the case falsely. I have also indicated that there should be a system of state-indemnification in cases where the judges find that innocent men have been dragged through oversight or overzeal of public agencies.

It is, however, incumbent to consider the other side of the shield also. There are innumerable cases where the accused get off through technicalities of law or the confusing implications of a *viva voce* examination of simple witnesses amid an unnerving surrounding and a weird atmosphere. Society may as well expect the judges to pronounce their opinion on the case before them, *first as to the extent of the corpus delicti, and secondly, as to extent of the probability of the accused having been responsible for the crime.* This will admit of verdicts ranging all the way from 'completely guilty' to 'completely innocent'. Thus, it should be lawful for them to declare that the accused is 'reasonably suspected to have been concerned in the case'. This is roughly and crudely done by the police, and not much reliance can be put on these verdicts by society, especially as this public agency is identified by it in common parlance, though with some truth, with the machinery for prosecution rather than of justice.

As it is rather a heterodox suggestion of mine, I shall try to examine the case for it in some details. I must say that the rules of evidence are characterized by a certain amount of arbitrariness and rigidity which are in some measure inevitable in any codification of law. It should not, however, bar further progressive thought when social expediency justifies it.

The opinions of an increasing number of the experts are being respected. The hand-writing expert has no more sure objective tests than has the medical man in many cases. The medical man describes retrospectively what might have happened to a man who was killed and this he does from his specific knowledge and general experience. I have also indicated what an immense amount of good is done or harm caused in the daily course of business by people relying on opinions of others. In the matter of executive action, with often grave and far-reaching consequences, reports by inferior officers are respected to an extent almost unjustifiable. What harm is there, then, if the judges who command more respect than other officers of the same position and who have heard all about a case, pronounce an opinion as to the actual happening and the reasonably suspected culprit ? They can say that the murder or other offence alleged was of such and such gravity and the murderer *is* or *most reasonably seems to be* so and so.

What they actually do is to announce whether the accused is or is not guilty of the crime alleged. Society anxiously pursues the courses of expensive trials only often to hear that the accused were 'not guilty.' Society may well ask, "Why then all this fuss ? Was a crime committed ? If so, of what nature ? If the accused were not guilty, who were ? What was the nature and extent of the complicity of the accused ?"

Evidently when a crime is reported or at least when it is taken up in court some social disturbance has occurred. The principle underlying punishment is also mainly the expression of social disapprobation. Now, if the technicalities of the law will not allow a judge to hang a murderer who can be rightly said to have committed the heinous offence, society should insist at least on knowing that he *was* most probably the murderer.

No sane man will call a doctor to see an ailing member of the family and say, "Here, doctor, is the patient, who has been complaining like this. Now tell me, has he got cholera or not ?" Will the doctor say, "This man has not got cholera" and go away ? The doctor hears all, sees everything, and then comes to find that such and such *is* the matter with the patient and that he should be so treated.

Society, however, does do the silly thing. The judge is made to labour hard at a case but the opinion he can form is never asked nor cared for. Well, if there *is* tight evidence, the offender suffers the penalty. If not, off he goes.

Instead of this alternative verdict, why not have a comprehensive opinion from him? He may say that the occurrence seems reasonably to him to have been like this and the accused were fully, partially, or to such extent, guilty or responsible or not.

Such opinions will be respected by the society and a sort of social disapprobation come to attach to the culprit. In cases of perverse findings, the appellate courts will be entitled to scrutinize them and reverse them. If the judges more often arrive at the wrong findings, the remedy would lie in so raising the standard of the personnel of the bench that equitable findings *are* the rule.

To sum up, I hold that the judge who hears a case at a great expense of time and trouble should be tied to no such liability of saying 'yes' or 'no' with regard to the complicity of the accused but should be expected by the society to give his impartial opinion as to the nature and extent of the occurrence, if any, and as to who were responsible for it and to what extent. This will ensue in findings all the way from 'completely guilty' to 'completely innocent', the former entailing punishment and the latter indemnification. There will be people who are responsible to certain extents and these will be either punished or at least judicially branded so as to merit a social disapprobation, however mild. This will make up for what we now see, viz., an amazingly large number of cases in which money, time, and labour are spent and the course of which society follows with righteous indignation only to know finally that the accused are 'not guilty' and are 'set at liberty'. Everywhere opinions of men are being respected and acted upon and there is no reason why those of judges who hear all sides, record everything relevant carefully, and of all people in the world come to know the *most* of the cases they have tried, should not be obtained on the record.

I plead for the greater freedom of the judges with the greater enlightenment of theirs. Ferri has held that 'it is clear the penal code should be limited to a few general rules on the modes of defence and social sanction, and on the constituent element of every crime and offence, whilst the judge should have greater liberty, controlled by the scientific and positive data of the trial, so that he may judge the man before him with a knowledge of humanity'.

The technicalities now fettering the judges seem to be necesary but are often stretched beyond usefulness. The right of appeal is a necessary right but is exercised more often by the resourceful than the deserving. The technical blemishes can be scanned only by experts who will do this on sumptuos fees and the theory that the greater the money that can be spared, the greater is the chance of one getting away from a charge, seems almost to hold good. Although instances of the higher courts letting off guilty persons for technical flaws are not so very rare in India, it will not be safe to quote these instance. I have no particular desire for courting a charge of contempt of courts. I would requote from Barnes a few instances and warn all that they are from a published book. Anyhow, the courts of America have no jurisdiction over me here.

A defendant was convicted under an indictment charging the theft of $100, "lawful money". The conviction was set aside because the indictment did not say "lawful money of the United States". The court gave as the reason for granting the defendant a new trial that the victim might have been carrying around Mexican money.

A defendant was convicted of stealing a pistol under an indictment which described the pistol as a "Smith & Weston" revolver. A new trial was granted because the proof showed that the defendant stole a "Smith & Wesson" revolver.

In Chicago, a notorious criminal known as "Eddie the Immune" was convicted of stealing $59. There was never the shadow of a doubt as to his guilt. The verdict was set aside on appeal because the jury did not find the the amount stolen.

In Georgia a defendant was convicted under an indictment which charged that he stole a hog that had a slit out of the right ear and a clip out of the left. The appellate court granted the defendant a new trial because, while it was proved that the defendant stole the hog, evidence disclosed that it was a hog with a slit out of its left ear and a clip out of its right ear.

In another case a defendant was convicted of stealing a pair of boots. The judgment of the trial court was set aside by the higher court, because it appeared that while the defendant had stolen two boots, he had stolen two rights.

In yet another case a conviction for larceny was set aside because the indictment averred that it occurred in a "store-house" when it should have used the word "storeroom".

In a Montana case a verdict of guilty of larceny was set aside on appeal because the trial judge instructed the jury that it must find intent to steal instead of a criminal intent.

In an Albama case a defendant was charged in the indictment with stealing a cow. The evidence proved him guilty of stealing a bull. In either event the defendant was guilty of grand larceny. The higher court, however, set aside the judgment conviction.

The American judges themselves are by no means responsible for this state of affairs but the old and antiquated maxims of procedure are. It is a shame that such perplexites should be hugged by society any longer. Instances similar to those quoted above almost justify Swift's satirical thrusts against the processes of law.

CHAPTER XXIII

CRIMINAL INVESTIGATION

Sec. 1 Early devices of detecting guilt—The oriental methods of applied psychology—The charmed-rice ordeal—The pin-down incantation—Confession in hypnosis—Clairvoyant methods—Tracking through mediums holding on to various articles—The divination by *Sadhus*—Torture and Confession

In the chapter on 'Principles of Evidence' I have described certain crude methods by which the elders or the courts used, as they thought, to determine the guilt of the accused. The wagers and ordeals thus resorted to were anything but satisfactory. Apparently the people then were satisfied with these themselves; else, they could think of nothing better.

In a similar way, although where the criminal went absolutely unknown there was nothing to be done, in cases where a number of suspects could be gathered, some tests, however crude, were applied. These tests were not altogether baseless but rested on psychologial principles then undiscovered. The „methods will interest my readers. They may also suggest further research, theoretical and experimental.

There are sound principles behind them, sounder at least than there were behind the ordeals. I shall first describe their nature and then try to thread them on to scientific principles underlying them.

Most of these are oriental methods and traces of the practices can be found in old Arabic, Persian, and Sanskrit works. I cannot deny myself the pleasure of naming at least one outstanding work. This is 'Kitabu-Rahmate-fit-Tibbi-wal-Hikmate' (Book on medicine and science) by Imam Jalaluddin Sayiuti, an eminent Muslim authority. I have this book in original Arabic before me as I write as also other extant oriental literature bearing on the topic.

Long before psychology itself came for close study, persons of average intelligence must have observed the fact that conscious lying ordinarily produces certain emotional disturbances. These ordinarily result in physical manifestations, such as blushing, squinting of eyes, squirming, peculiar monotone of the voice, throat pulsations, cold sweat, change of the colour of the face, etc. In India the movement of a suspect's big toe was supposed to indicate a guilty mind.

The 'charmed rice' ordeal has been much in vogue in rural Bengal. In my younger days I not only saw the device attempted but I also myself experimented in my ways to see what it was worth. I must confess the results were not very satisfactory. The principle, however, was sound and the subsequent developments have been promising.

The origin of the practice is old. Some trace it to a Chinese custom ; some to an Indian one. I find traces of similar practices in Arabic works of some antiquity.

The device is simple and the proceeding straightforward. On the occurrence of a theft in a locality, the likely culprits are assembled in one place. A quantity of rice is taken and a man learned in the holy Quoran (it really does not matter if the text cited be a Hindu scripture either) utters incantations over it. Sometimes by way of creating a psychological receptivity among the suspects, a short but forceful lecture is given. It is urged in the manner of hypnotic suggestions that the really guitly person will be unable to pound the rice to powder. Each of the men assembled is then given a handful of the magic rice and asked to chew. After a minute or so, the suspects are asked to spit out on the ground the contents of their mouths. It is found that the guilty person or persons had failed to chew the rice, or even if he or they had chewed the rice, it is strangely dry. The people then set about them and very often one or two of them confess.

The device sometimes succeeds and the principle behind is not so obscure. The reputation of the divine, the superstitious belief of the village people in the mystic powers of the scriptures,—all work on the mind of the suspects and the really guilty person is impressed even against his will that he will not be able to chew the rice. The usual psychological reactions follow. His throat gets choked and his glands fail to secrete.

The dangers of the test are obvious. A highly strung person can be so worked up that he may fail to come out unscathed in the test. The margin of error is dangerously large, but the principle is sound. The modern 'lie-detector' stands on it.

The pin-down ordeal is also similar. The suspects are made to sit in a row and the divine looms in front with a big nail and hammer in hand. He lectures drawing attention of all to his powers, the powers of the scriptures, the needléssness of worry on the part of the innocent, *but* stresses that the really guilty person *shall* be found out. He then reads out his incantations and deals hammer blows on the nail driving it down into the ground. After the nail has been driven right in, he challenges that the culprit will not be able to get up but others will. The results are sometimes gratifying. The culprit struggles to get up in vain and offers to confess. The same principle and observations as in the 'charmed rice' ordeal apply in this case.

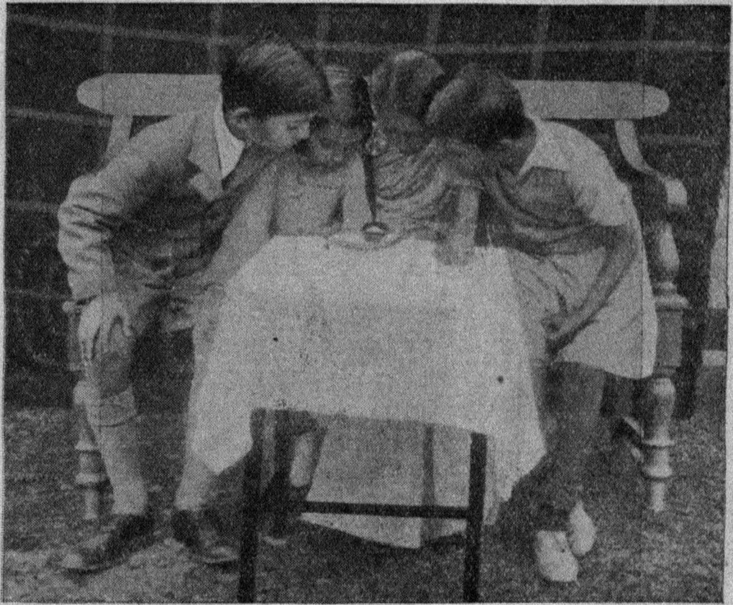
The other method advised is trying to get the suspect speak out in hypnosis. There is no mention of the modern practice of 'hypnotism' but the method advised is very similar to it. The suspect will have to be approached while he is fast asleep. His bosom will be laid bare and the divine put on to him. The divine will go on reading his incantations and suggesting in whispers that the suspect will—must speak out about the crime. The man will narrate his doings in hypnosis. The results are, of course, uncertain.

Another set of methods advised relates to the so-called clairvoyant or suggestible mediums.

An egg, a betel leaf, or some such thing is taken. Coal tar is applied and a shining black face is made. A child or a few children are then asked to look at the thing intently. It is needless to say that suggestions are indirectly made as to the probable culprits. The child or children cry out as seeing a particular man in the black. The man is then tackled and he either protests or confesses. (Illustraions 1 & 2).

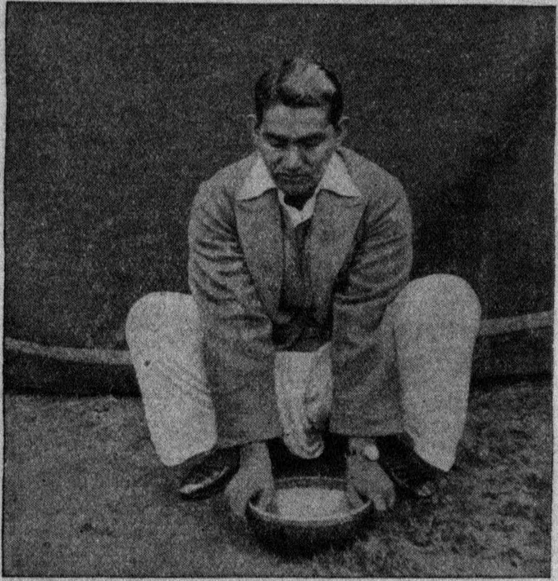
(1)

A still, more mystifying device consists in making a jar or a cup move and indicate the place of deposit of stolen property or the culprit responsible. A bell-metal cup is treated with incantations and a man asked to hold the two sides of the cup firmly down against the ground. Immediately the cup proves hostile and begins



(2)

to run all over the compound with the man all the time wishing it to stop! I have had the thing experimented in my presence times without number. It becomes extremely difficult for the human medium to keep pace with the weird cup but the story goes that if he can stick to the last, the cup travels the same way as the culprit and settles upon the stolen property in the long run ! (Illustration 3).



(3)

A variation of this practice is offered by making the medium obey two bamboo-splits held in the two arm-pits. These pieces are supposed to move on with the medium and finally to grapple with the real culprit.

Yet another method consists in two men holding a water-jar aloft with the tips of their fingers. A sacred book is kept on the jar and the divine reads aloud portions of the scriptures. The names of the suspects are written on separate green leaves (of plants) and placed upside down on the book one by one. The jar twists and turns round and round in the case of the name of the real culprit being placed on the book and remains unmoved when names of innocent people are so placed.

All these processes involve what is known as involuntary muscular action, much though the mediums themselves wish otherwise. The results are, of course, uncertain.

The divination by *sadhus* (saints) as to culprits and whereabouts of stolen properties is another mystifying process in which many village people believe. Authentic instances are cited as to occasions of a *sadhu's* having led to discovery of stolen properties. It is stipulated that the police will not be called nor any fuss made about such discoveries. The satisfied client observes the condition but exaggerates the powers of the *sadhu* for all time to come!

The secret of this success on the parts of these *sadhus* lies in their questionable association with criminals some of whom offer to enhance the prestige of their saint by letting him in the know of their exploits. Naturally enough, the *sadhu* will not make a wholesale business of such divination on the plea that his inspirations are only occasional! He will, however, keep up his name and fame by periodical feats confidentially performed but intended to be really broadcast.

The crude but more direct method of extorting confessions from suspects by beating them up is as old as humanity. Nero was one of the greatest 'third degree' artists known. The methods used in the Spanish Inquisition are matters of history. In the Tower of London is to be seen an instrument which was used to extract confessions. The victim was put on to it, his feet fastened to one end and his hands to the other, his body being, by a system of cranking, gradually pulled apart. The pain was so severe that in many cases the victim offered to confess and did so, although really innocent of the crime.

In the Doge's Palace in Venice, every known method of torture was used to extract confessions. The information box system was in use. Informations by accomplices and enemies were dropped into the box and these were acted on. Even anonymous accusations led to arrests and torture.

The method of torture has been in use almost everywhere in the world. Stern parents, thoroughgoing believers in the efficacy of the rod, were perhaps the originators of the method. 'If you don't give out the truth, my boy, you will get more of this,'—so began the father demonstrating his method physically. 'Let there be a confession,' he wished and there was a confession, true or false. The conceited father used then to brag about the efficacy of his method and the thing caught on!

The agents of society then came to use the method with, what they thought, unqualified success. Not many years ago, in the police departments of various countries, prisoners were abused and ill-treated in the hope of making them confess. The framers of the Indian Penal Code were perhaps cognizant of the use of the method in India. They laid down a severe penal clause to discourage the practice. Although avowedly not done anywhere now, old-fashioned officers still believe in the efficacy of the method and surreptitious use of it is occasionally met with. Nowadays, the prisoner is informed of his rights and warned that an incriminating statement made by him can be used against him.

The surreptitious use of 'third degree' methods was lately said still to be a 'widespread and increasing danger of our times' in a report addressed by the Howard League for Penal Reform to the Fifth Committee of the League of Nations. This committee, which deals with social questions, was urged to 'press upon States-members of the League the need for watchfulness in their administration and of mutual co-operation' to stop these methods. The report cited instances of brutal torture and mentioned that among the countries where police examinations are under more or less strict rules, are England, Scotland, Wales, Australia, New Zealand, South Africa and most parts of the British Empire, Denmark, Holland, Norway, Sweden, Switzerland, Czeckoslovakia and Argentina. In India, Kenya, and Tanganyika confessions made to the police are generally not admissible as evidence. In Uganda no confession made to a police officer of lower standing than an assistant inspector is admissible. In Austria, Italy, and Russia police interrogations are governed by the same rules as those in force for examining magistrates. The restrictions do not appear to operate in political cases. Countries which have no restrictions include Germany, Belgium, Poland, Portugal, Egypt, a number of States in the United States, and Canada.

Confessions generally, whether obtained or offered, should be used with extreme caution. They may be the outcome of a variety of causes. Despair of defence, vanity, intent to throw much of the guilt on other persons are some of the factors contributing to them.

The torture is an utterly unjustifiable method. It is unworthy of any police force worth the name.

What is taking its place as a more humane and perhaps a more useful method is the 'humane third degree' as detailed by G. S. Dougherty, formerly Deputy Commissioner and Chief of Detectives, New York Police Department, in his book, The Criminal as a Human Being. This consists more or less in a battle of wits between the inquisitor and the accused. I shall detail the method further ahead.

Sec. 2. Modern investigation—The crude method—Visit locality, examine neighbours, and come to a finding—Unreliability of the method—Trend towards collecting circumstantial evidence—Detective fiction—Detection result of investigation—Psychology of investigation—Deduction—Qualities of a modern investigating officer—Need for his enlightenment, theoretical and practical—Solomon's detection—Archimedes detecting base metal in the crown.

Men in the old days were helpless against the unknown criminal. What they could do was to look for divine punishment visiting the culprit *some day*. 'Murder will out' went the saying. A Bengali proverb goes '*dash din chorer ek din shadhur*' (Ten days for the thief, one day for the house-owner). The culprit does in the end get caught but think of the trouble he can give before he is caught and after he is dealt with. An agency gradually evolved to take over the duty of looking for the culprit and finding him. The police took over charge from the old trackers and divines just as doctors took it over from the priests and barbers.

Ages elapsed before doctors were able to demonstrate before society how systematic treatment *does* do good to ailing humanity. The police have been only a short time in the field. They can claim to have made immense strides already.

Modern investigation began with the crude method of the officer visiting the scene of occurrence, examining the victim and his neighbours, and coming to a finding. The ill-educated officer cared little for anything beside and his findings were as uncertain as human conjecture could be. Criminal psychology was a closed book to him and his commonsense was commonly dull. He sometimes gave the known bad characters of the neighbourhood a good shaking and sometimes one of these broke and offered a plausible story. The results of his investigation so far as detection went, were meagre. Of course, he set up people and had them convicted in court but the cases relating to these people were already clear. The accused were probably named and the evidence was there already. What he did was to weigh the two sides and choose between the two contending sides.

The eye-or ear-witnesses have, however, their limitations and psychology tells us that a number of factors make for the unreliability of witnesses. 'No man tells the exact truth' may almost be taken as a maxim. I shall elaborate the idea presently.

Gradually the idea of circumstantial evidence being used as a check against the vagaries of testimonial evidence came to take root.

The idea was given a definite impetus to by what we know as 'detective fiction'. This branch of fiction is of respectable antiquity, though it is in recent times only that it has been elevated to a branch of art. About the last hundred years, the art of detective fiction has been raised to supreme attainments.

Old novelists portrayed crime in many cases but it was sensation they sought rather than reasoning. Detective fiction really begins with Poe. Poe's method of telling the story is by introducing a private investigator chronicled by an unimaginative friend. Collins in England and Gaboriau in France put the fashion of stories of crime in vogue and influenced writers in England and America. 1887 was the great year when *Sherlock Holmes* broke upon the world.

Holmes was a really great achievement. He was followed by similar characters, *Martin Hewitt*, *Thorndyke,* and *Poirot* who in the hands of other writers played their ingenious parts well. These detectives follow up clues and deduce things in their own uncanny ways. *Father Brown* and *Mr. Fortune* mark a separate type of the intuitionist detective. No lengthy method of proving guilt is necessary ; they can guess the secret of the crime from their wide knowledge of sin.

We are not here on an excursion into literary criticism. Suffice it to say that the detective story has now joined the novel of realism and the tale of passion as fit and proper reading for evenings and holidays. To the student of crime dectective fiction provides more than casual delectation. It stimulates a passion for solving riddles of crime. It shows ways and means some of which can be easily adapted in ordinary police investigations. *Holmes* made deductions; *Thorndyke* used the resources of the laboratory. Both immensely inspire the enlightened investigator. The love-affairs around the mystic detectives need not, however, embarrass him. The record of detection should in general be as cold as a scientific experiment.

Whatever may have been the eccentricities of these detectives, the modern investigator will have to remain a normal man, sane and sober, intelligent and enlightened. Many of our investigating officers, however, know of criminology no more than do bank clerks or office accountants. They are steadily improving their knowledge.

It is, however, proper that we should have some idea as to the qualifications that may be desired in an ideal investigating officer. Hans Gross lays down that an ideal investigating officer should be indefatigable in zeal and application ; should have self-denial and perseverance ; should be able swiftly to read men and have a thorough knowledge of human nature. He should further be agreeable in manner and possess an iron constitution.

Dougherty, a former Chief of Detectives, New York Police Department, is of opinion that a successful detective should possess most of the following qualifications :

> A knowledge of human nature, in order to know what persons are likely to do ; an interest in psychology, in order to know why persons act and feel and think as they do ; knowledge of the elements that constitute such crime under investigation, as well as the evidence that must be obtained ; ordinary intelligence and common sense ; a keen power of observation ; ability to practice deception (?) ; ability to gain and hold confidence ; resourcefulness, persistence and tireless capacity for work ; a suspicious nature ; an acquaintance with the kind of business, as well as with the persons who are employed, who live in, or who frequent the section to which he is assigned ; ability to question so as to get information ; knowing by sight persons who are likely to be the subject of police search.

It is not assumed that society will get men ready with these qualifications to accept the duty of investigating crime but only that the more of these qualifications that an investigator does possess, the more successful is he likely to be. What this table of qualifications is really expected to do is that our investigating officers should *acquire* as many of these qualifications as may be possible.

The psychology of detection involves the mental processes of 'thinking' and 'reasoning'. Thinking may be defined as the mental manipulation, in the service of our purposes and interests, of the knowledge of events and things and persons which we have derived from past experience. At one time thinking was regarded as a rather mysterious activity exclusive to human beings, but this idea has now come to be discredited. Careful analysis suggests that thinking consists in a peculiarly mobile combination of certain factors all of which are operative in varying degrees even at lower levels of mental life. These factors are retention, discrimination, recollection, association, "trial and error", and insight. I need not detail the significance of these factors of elementary psychology here.

Reasoning is of two kinds, inductive and deductive. In the inductive process, we move from particulars to general. The germ of inductive reasoning is present whenever some single experience leads to confidant anticipation of its recurrence under similar circumstances. The child who burns his finger in the fire reasons that he will do so again if he puts his finger in again. In the deductive process, we proceed from the general to the particular. Both these methods, inductive and deductive, come handy in the working of clues and generally in detection of crime.

The investigating officer is required to know the elementary factors of criminal psychology. This is a wider term than the psychology of the criminal I have detailed in an earlier chapter. Criminal psychology has to do with the knowledge of not only the mind of the criminal, but of all concerned with the crime, including the victim and the witnesses. As a matter of fact, of the criminalist's tasks, the most important are those involved in his dealing with the other men who determine his work, with witnesses, accused, jurymen, colleagues, etc. These are the most pregnant of consequences and in every case his success depends on his skill, his tact, his knowledge of human nature, his patience, and his propriety of manner. The need for discrimination in the matter of sifting oral evidence arises from a fundamental trait of human character which we shall detail presently. It is this—our statements are always coloured and that for emotions working on us. Human language is a vehicle of emotional expression as well as of conceptual meaning and therefore of subjective prejudice as well as of objective insight. Hence it is said that the greatest historical advances in knowledge have been made in the mathematical sciences, in which thinking is carried on not in words but in specialized symbols stripped of irrelevant and hampering emotional connotation. I shall explain and illustrate this feature of human conduct presently.

The wisdom of Solomon in the matter of his adjudicating between the two mothers disputing ownership of the son will not be challenged for it rested on a true understanding of the psychology of a mother. It is curiously true also that Solomon's judgment would be readily reversed in a modern appellate court, on the ground presumably that his action did not quite conform with the requirements of the Evidence Act! Apart from Solomon's detection of the false mother, the historic instance of detection of fraud on the basis of an objective test was provided by Archimedes who is reputed to have detected base metal in the crown.

As I have said already, I can but touch the fringe of the vast topic of scientific criminal investigation in this general treatise. I shall only attempt a short outline on a novel scheme of mine.

CHAPTER XXIV

PRINCIPLES UNDERLYING CRIMINAL INVESTIGATION

The rendering of criminal justice involves the following processes :

1. The verification of the crime and the identification of the criminal......the province of police investigation or preliminary enquiry by other agencies.

2. The discussion of evidence : prosecution and defence......the province of lawyers, court officers, etc., (in the presence of judges and juries.)

3. The decision upon evidence.........the province of the judges and the juries.

4. The disposal of the offenders according to the directions of the judges or as the cases of the offenders may later merit...the province now mainly of the prison officials.

The order, however, in our discussion of the processes has almost been reversed and that for various reasons we have already seen. Although the first process is concerned with the criminal investigator, he has been the last to arrive on the scene.

The subject we are now dealing with is too vast for any one treatise to compass; in a general treatise of the nature of the present work, I can but touch the mere fringe of it. There is ample literature in the field already.

In treating of this important topic, I propose to follow the usual evolutionary line and a novel scheme of mine. Instead of studying the various scientific aids to investigation now forthcoming, in their loose and scattered outlines, I shall group them together under a few fundamental principles which I have myself formulated. I think the scheme of treatment will be more scientific, or at any rate, more useful.

The verification of the crime and the identification of the criminal are the main duties of the investigating officer and he will best discharge these duties if he bears the following fundamental principles in his mind.

1. Every crime ordinarily leaves traces and every criminal leaves clues.

I have purposely added the word 'ordinarily', for I have no desire to formulate principles with anything like Newtonian precision. The principle rests on commonsense and observation and if and as soon as I claim any universal validity for it, a host of critics will rush to assail me. All our theories *are* rough approximations to truth ; they must yet be infinitely away from absolute truth.

If Cain and Abel only were to be at a place and Abel were to be found slain, (we are not following the exact legendary details,) a third person arriving at the scene of occurrence just at the time when the former was doing the latter to death would have no doubt as to either that Abel *was* killed or that *Cain* was the culprit. This would be investigation 'made easy'. If, however, the third person arrived at the scene sometime later and Cain did not straightway confess and plead guilty, he would have a series of deductions to make from the circumstances available. Could it be natural death ? Suicide ? Accident ? After having disposed of all other possibilities, he would conclude this was a case of murder or manslaughter and then try to find the culprit. Cain might possibly be weeping and lamenting the very sad demise of his dear dear brother and suggesting a stranger having run away after perpetrating the foul crime. If Cain, Abel, and the investigating third person were the only three persons in the realm, our detective might not take long to identify the culprit, although it is doubtful if a modern court would so easily convict him.

A modern case of murder presents far more intricacies. So do other crimes. But the outstanding fact remains that the crime speaks for itself, if, of course, the investigator has ears to hear with.

A crime is ordinarily a physical doing—an act or omission—and does ordinarily also leave physical traces. Not everyone is like Solomon's vizier who, according to the Quoranic legend, removed by magic the precious throne of the queen of Sheba in a twinkling of an eye. Removing a thing like that will entail immense labours, time, and trouble on the parts of modern criminals and the queen's watches will not let the thing go so easily. Besides, even Solomon's palace will not conceal such an identifiable property unless, of course, Solomon chooses to play the part of the modern 'receiver' of changing the face of the throne completely by careful manipulation !

Thus, although a crime does speak, it can be silenced or choked. Hence the need for a prompt arrival at the scene of occurrence. The quicker can a case be taken up, the better are the chances of its affording useful traces. I shall explain presently how these traces are themselves treated and tested.

The public should be well-advised to leave the traces of a crime undisturbed. Not every trace that may be ultimately useful is visible or otherwise easily tangible. The other requirement that is imperative is that prompt information should be given to the proper quarters. Many a crime goes undetected because of the information being delayed or the investigating officer being late in arrival. The criminal now-a-days is apprehensive of at least a police pursuit and he takes good care to see that clues leading to him are soon obliterated or spoiled.

How prompt information led to an immediate and dramatic chase carried out successfully was illustrated in what is known as the Crippen case. Crippen was wanted for the murder of his wife. The point of interest here is how the attention of the whole world was rivetted upon an Atlantic steamer on its way from Antwerp to Canada and having on board a man and a woman, disguised as a Quebec merchant and his son. For a week previously search had been made for them in every corner of Europe. Their protraits had been so widely circulated by the newspapers that their faces were familiar wherever English papers were read. The captain of the ship penetrated the disguise and communicated the whereabouts of the wanted pair to the London police. An officer was immediately sent out by a swifter steamer to greet them on their reaching Canada. Day by day, with almost feverish excitement, the world was awaiting the result of the race between the police officer on one steamer and the fugitives upon the other. The officer won easily, and was ready waiting to arrest Crippen and his companion as soon as their steamer was to land. The trial of the case had many points of scientific interest.

In the old days a fugitive had a better chance of escaping, for then, slow as were the ways of escape, the ways of advertising the criminal, were slower still. To-day, criminals can give a longer flight but the arms of the police are swift and long enough. But delay to-day also involves more trouble and expense and often loss or weakening of the evidence.

Science has afforded immense means to be availed of both by the police and the criminal although the ampler resources of the former should naturally give them an advantage on all counts. There is no wonder that the police avail of these methods ; a visit to the office of a third-grade daily newspaper would show one how the whole staff has been organized for prompt action and for getting the most out of modern labour-saving and generally aiding devices. The wonder is that the Indian police *is* so badly equipped and so little trained. Perhaps not many investigating officers anywhere in India have complete boxes of outfit ; not many know of the many tools, commonplace but useful, that should accompany them to the scene of occurrence of the simplest crime.

Hans Gross enumerates the various items that should form contents of the investigator's deed-box. I quote below the equipment usually carried by a New York police investigator. It consists of the following items :

> Ten-inch screwdriver, compass saw, hammer (with claw), half-inch wood chisel, eighteen-inch steel jemmy, twelve-inch shears, eight-inch pliers, large electric lamp with wire, flashlight with three spare bulbs, steel tape measure, six-inch lens, two-inch brush, four-inch glass test-tube, six-inch glass test-tube, eight-inch glass test-tube, mirror, rubber gloves, alcohol, ten-inch mill file, tapering file, slim saw file, cheese-cloth, white fingerprint powder, fingerprint ink, fingerprint roller and handle, heavy twine, black crayon, white chalk, etc.

Paper, forms, pocket-editions of law-books and manuals, etc., should certainly be added. These go without saying.

These lists compare with equipments carried by the British police investigators. There are obviously some differences, but the essentials are the same.

The police departments in India should adapt these lists to Indian requirements and provide equipment boxes complete to the investigating officers. They should be compulsorily carried by every investigating officer to every scene of occurrence, necessary training being, of course, given as to their use.

The second theorem, so to say, is :

2. The criminal is a human being.

This statement needs an apology for it would strike one as a mere truism. Still the implications of this statement have to be brought home to many. This has not been a very common viewpoint among detectives, policemen, prosecutors, or even judges. In an earlier chapter I have stressed the fact that the psychology of the criminal is but a part of the psychology of mankind. This only means that the criminal shares the same instincts and emotions and behaves in much the same way as any other human being. I have repeatedly called attention to the fact that the criminal and the non-criminal do not form two separate classes. A few maniacs, phobiacs, idiots, or lunatics are there of course, but it is not *they* who remain long undetected.

If we bear the adage we are here considering in mind in the working of crimes, we shall look into minds very much like ours. We shall know that the criminal who has committed the crime was actuated by some motive, however undetectable. The motive of the crime may have lain in want, in cupidity, in lust. or revenge. Offences against property are committed mostly with a view to gain, although occasionally they are committed on other scores. Even the same party committing a crime may be composed of persons who may have entirely different motives. A hostile neighbour can invite a gang and even take part himself, in a case of dacoity. Thus the man will be actuated by a motive of revenge, but the gang will work for profit. The principal and the accomplices may thus be found to be working on entirely different counts.

This principle also serves to remind us of the trite Bengali saying, "ek hate tali bajena" (It takes two men to make a quarrel). Thus, many a man will come and complain that others have injured or assaulted him without the least provocation offered but one can be sure that the adversaries are human beings and as such would not injure people so wantonly as is alleged. In cases of rioting, etc., it is almost always the case that both sides are to blame, although one side is to blame more than the other. It is almost a universal human trait that a man in complaining will always minimize his own blame and maximize that of his adversary. This should guard an investigating officer from depending too much on the tale told first either before him or others. A fairly liberal margin will have to be kept for the play of this human trait.

This rule of caution will come handy to the investigating officer in estimating the extent of the *corpus delicti.* It must, however, be understood to be subject to a limitation. In many cases, thus, a complainant will minimize the occurence in order to save a slur or avoid a social scandal. A case of rape may be reported as one of outrage of modesty, a suicide on the score of a social scandal may be put down to a suicide on account of mental derangement or even physical ailment. An unwary investigating officer may thus come to be deceived.

The practical use of keeping the principle we are considering here in mind to the investigating officer is that he will be able to reconstruct the crime more accurately. Thus, at the scene of occurrence the investigating officer may very well question himself thus: "Now, if the crime was really committed, how could the criminal have done it? Could he do it alone? If I were in his position, how would I have proceeded? How many men were necessary? What impediments were they likely to have found and how did they surmount them? What articles are they likely to have handled? How did they retreat? If I were to commit this crime myself with the help of others, what precautions would I have taken? Does the actual occurrence indicate if it was committed by the criminal taking a sporting chance or was adequate information collected beforehand?" And so on.

These questions open up avenues for investigation and do so usefully. I have no space to detail the various lines on which such inquiries may in actual cases proceed.

With regard to the examination of the criminal, this principle will also hold good. This topic will be discussed in connection with the following principle.

The third principle, so to say, is:

3. No man tells the exact truth.

In stating this, I may be open to rebuke, for this is not a very flattering compliment to the human race. I must, however, hold that the proposition is as universal in application as any human maxim can be. I purposely except *none.* If there be one who is an exception, I would rather call *him* superman than modify the *proposition.* I do not, of course, mean short and fragmentary utterances but I do mean the sort of statements that men usually make in relation to other men or to incidents generally. In fact, the epitome of what Hans Gross has, in the five hundred closely printed pages of his book, "Criminal Psychology", reviewed, is contained in these few words.

Intended lies are shockingly pervasive. People lie to conceal something, to expose some other ; to alarm a foe, to please a friend ; to cause a friction, to ease a situtation ; to create a prejudice, to improve an impression. A great many 'rationalize' their lies by inventing excuses ; many others accept mild lies as a necessary evil of social intercourse.

Intended lies in criminal cases arise from the very nature of criminal trials. The "bargain theory" of justice that still holds good encourages the prosecution charging the accused with not only the bare degree of the crime they are said to have really committed, but some exaggerated form of it, so that, after a sort of credit and debit, the real guilt may hang round their necks, whereas the accused, instead of giving out what has actually happened, begin by denying all altogether. The result is that the two sides present largely worthless and strangely twisted tales before the court. I have just said in connection with the previous principle how it is almost a universal human trait for the complainants to exaggerate and the accsued to plead complete innocence. Witnesses on both the sides come forward not to aid justice but to uphold the sides they represent. It thus happens that even the most hopeless offender can get together a few witnesses to depose in his favour.

Wintesses who are apparently disinterested are generally disinclined to be dragged in matters in which they have no direct interest. When they do come forward to say anything, they have most probably been canvassed by the one side or the other.

Even when disinterested witnesses *are* found and *are* free from prejudice, a number of factors detract from the reliability of their testimony.

These factors lie in the many deceptions that our senses play with us. There may be maloservation, loss of memory, error of judgment, etc., etc. We all know of the attempt that is usually made by the pleader of the defence by way of drawing attention of the jury to discrepancies in the testimony of witnessess in a case. As a matter of fact, there remain very many. The public prosecutor, in his turn, convincingly tries to show that they do not really matter.

"Gentlemen of the jury", the latter usually submits, "may I put it to you, shrewd judges of human nature, that human testimony is always liable to error ? As a matter of fact, it will be most suspect if a case can be found where all the details of evidence fit in so nicely as to leave no room for comment. That, gentlemen, would indicate careful planning and, perhaps, deliberate concoction. I would cite an example. You gentlemen must have come to court, let me presume, by hackney-carriages. There were ponies to draw your carriages. Now, when you did get in, you must have seen these ponies. They are too tangible to evade your eyes. If I now ask you each to tell me the colour of the ponies that drew you to court, I am sure you will make the most palpable discrepancies among yourselves. Will you not ? Does that, however, justify my honourable colleague of the defence to insist that since you made these discrepancies on so very easy a point, you did not acutally travel by carriage ? Most certainly not........."

Apart from these wordy battles in court, science has now come to demonstrate the errors we daily commit in depending too much on our sense perceptions. Take, for instance, our eye, our most useful organ. Most of our knowledge is gathered through this valuable door but, strange though it may seem, one of the greatest liars on the earth *is* the human eye. It constantly misrepresents reality. The eye tells us that the lights on an embankment or a street have a regularly decreasing interval between them, though actually the intervals are exactly equal. The eye tells us that two railway lines are gradually converging, though actually they are parallel throughout the entire length. The eye tells us that a distance which we rightly judge to be about five miles when we view across country, is about two when we view it across water. In fact, there are similar optical illusions which confront us at every turn.

Apropos of such discrepancies occurring among lay witnesses, it would be interesting to quote an instance how even careful observers like jurists, psychologists, and doctors, give discrepant statements with regard to the same event. In a book published in Paris sometime ago, it was narrated how at a meeting of scientists, a quarrel was staged between two. The president of the meeting, under the pretence of obtaining legal advice, asked everyone present to write an exact report of what had happened. The assembly was composed entirely of jurists, 'psychologists, and doctors but only one report contained less than 20% of errors, 13 had more than 50% of errors, and 34 had invented between 10 and 15% of details. When scientists can err like this, it can be understood that the best and most accurate statement or report by others would be subject to a far greater margin of error.

The untrustworthiness of eye-witnesses as to detail was, as quoted by Mitchell in his book, "Science and the Criminal," demonstrated by Professor McKeever at the Kansas State College. The professor asked 25 students at the college to witness a short drama and immediately afterwards to write a detailed description of the characters and incidents. It was seen that there was the wildest discrepancy with regard to the appearance, conduct, and other particulars of the characters and to the incidents.

The adaptors of 'Criminal Investigation' from

Hans Gross very rightly state the case of circumstantial evidence as against oral testimony. They say :

It must be admitted that at the present day the value of the deposition of even a truthful witness is much over-rated. The numberless errors in perceptions derived from the senses, the faults of memory, the far-reaching differences in human beings as regards age, sex, nature, culture, mood of the moment, health, passionate excitement, environment, all these things have so great an effect that we scarcely ever receive two *quite similar* accounts of one thing ; and between what people really experience and what they confidently assert, we find only error heaped upon error. Out of the mouths of two witnesses we *may* form for ourselves an idea of the circumstances of an occurrence and satisfy ourselves concerning it, but the evidence will seldom be true and material ; and whoever goes more closely into the matter will not silence his conscience, even after listening to ten witnesses. Evil design and artful deception, mistakes and errors, most of all the closing of the eyes and the belief that what is stated in evidence has really been seen, are characteristics of so very many witnesses, that absolutely unbiased testimony can hardly be imagined. If Criminal Psychology teaches us this much, so the other parts of the subject show us the value of facts, where they can be obtained. The trace of a crime discovered and turned to good account, a correct sketch be it ever so simple, a miscroscopic slide, a deciphered correspondence, a photograph of a person or object, a tattooing, a restored piece of burnt paper, a careful survey, a thousand more material things are all examples of incorruptible, disinterested, and enduring testimony from which mistake, inaccurate and biased perceptions as well as evil intention, perjury, and unlawful co-operation, are excluded. As the science of Criminal Investigation proceeds, oral testimony falls behind and the importance of realistic proof advances; "circumstances cannot lie", witnesses can and do. The upshot is that when the case comes for trial we may call as many witnesses as we like, but the realistic or, as lawyers call them, circumstantial proofs must be collected, compared, and arranged, beforehand, so that the chief importance will attach not so much to the trial itself as to the *Preliminary* Inquiry.

To return to our topic, we would stress that what is intended is that human testimony should be accepted with a grain of salt, and not that it should be discarded altogether. It is undoubtedly a great pity that the present procedure binds the judges too tightly and the statements of witnesses are scanned and annotated with the care of the gospel whereas what is really expected of the judge would be to study the witnesses psychologically and come to appraise the burden of what they *mean* to say apart from what they are *meant* to say. This much of freedom for the judge is essential.

Modern investigation actually goes in for collateral evidence in order to correct or check oral testimony. The other principles we have yet to detail will speak of this tendency.

The examination of the witnesses and the accused is a more laborious task than many people may suppose. It is not enough to go to a scene of occurrence, summon neighbours and ask them of what they know. Many in this case will take the line of least resistance and deny knowledge. Many will get nervous and give out things which they do not actually mean. The use of torture, we have already seen, does not come for much. There are people who are garrulous beyond usefulness ; there are others who are forbiddingly secretive.

These difficulties are stressed by Hans Gross in his work 'Criminal Psychology' and his treatment of them is masterly. The upshot of the treatment is the principle we have just enunciated, namely, no man tells the exact truth, and the remedy lies in the ability of the investigating officer in drawing things out of witnesses. Dougherty mentions the 'humane third degree' which consists in a battle of wits between the examiner and the examinee. The skill lies in forcing things out of people without seeming to.

Without going into details, I may indicate that to draw out a person is to put him at his ease and arouse his interest. A person is interested in himself and it is through appeal to his emotions and his instincts that one arouses his interest in oneself or in what one has to say. Let me make my position clear by an illustration.

Suppose I am seated in a compartment of a train. I have been riding for sometime and have a long trip ahead of me. I feel like talking with somebody—that is the gregarious instinct at work in me. The gentleman sitting on the berth opposite me is an elderly man with the look of an interesting person. He is deeply absorbed in the study of his newspaper, possibly having nothing else to do. I feel inclined to get him interested in talking to me.

"I beg your pardon ; have you a match ?" I say, by way of breaking the silence.

The gentleman nods, fishes a box of matches from his vest-pocket and hands it to me. I say, "thanks". He nods again, smiles, and goes back to his newspaper.

"A long, tiresome ride across the country," I remark again. "Dont you find it so ?"

"Yes, pretty tiresome," he agrees, and lapses back to his paper. I then try other topics,—

politics, education, crops, but nothing interests him. He simply agrees and smiles. This means I have not yet touched upon something close to his heart, something that arouses his interest.

Suddenly while remarking on the weather, I opine that the I. F. A. shield that was going to be played was getting an ideal weather. The gentleman gets interested !

"What do you think of the Mohun Bagan ?" He asks animated. I am all complimentary. Now he becomes eloquent.

"Have you heard anything of a boy named Ajit ?" he queries.

I guess the boy is the gentleman's ward. The story pours forth and the gentleman glows as he describes how people are unanimously of opinion that this boy possesses strength, speed, skill, and, above all, character, although he himself does not think quite so much ! How Mohun Bagan has done so long without this prodigy is something of a mystery to me but I have only to nod in my turn to let the gentleman talk on and on,—unendingly.

I may not have done anything consciously, but in a process of groping to find something that would interest this gentleman, I have aroused his instinct of attraction which, in his particular case, lies in his attachment for his son. Parental affection probably *is* the strongest form which the instinct of attraction can take.

The same principle holds good with other phases of the instinct of attraction. The cobbler who mends my shoes for two pice may know of nothing else in the world, but when I say that he is peerless in his job at the station, he leaps up with joy. In other words, I arouse his interest.

I shall quote two examples of actual detection, by means of a sort of the 'humane third degree' we have been speaking of. In the one case, the result was cleverly achieved by a show of force without actual use of any, and in the other, by sheer softness and understanding.

Arthur Rowan relates the story which concerns himself. A postmaster and his wife had been brutally murdered for their valuables—some Rs. 2000/- in cash and a quantity of jewellery. The postman was arrested, tried for the double murder, and sentenced to death. He did not, however, reveal where the plunder was hidden. He had a daughter and a daughter-in-law who plainly knew of its whereabouts, and the problem was to make one of them speak. The local police inspector and Rowan (a postal investigator) discussed the possible ways and decided on a plan. Two adjacent mud-huts in the village were temporarily appropriated and a lady was hired whose calling pronounced her free of scruples. She was placed in one of the huts and she was to impersonate the postman's daughter and was duly coached. The daughter-in-law was then taken to the other hut.

The inspector visited the accessory and shouted in the fiercest tones, "Now then, where is the stuff hidden ? Tell us quick, or you will get beaten." A long silence ensued, after which the inspector called out, "Very well, constable, do your duty then."

A firmly stuffed sack had been hung in the hut, and a brawny policeman belaboured this energetically with a stout stick, to an accompaniment of piercing and thoroughly realistic scream from the lady. At length these died to whisper, then followed mutterings, in the course of which the inspector was heard to exclaim, "Ah, so you do know ; Yes, go on......"

When they entered the second hut, they found the daughter-in-law cowering in a corner, weeping. "Now it's your turn", said the inspector brusquely, "we want to be sure that your sister-in-law wasn't lying".

The scheme worked perfectly well. Hurriedly the woman poured out all she knew and signed a written statement.

Mr. Dougherty of the New York Detective Staff describes his method with two convicts. Let us hear him as he narrates for himself :

When each convict was brought in, I asked him to be seated and instead of asking questions, or trying to break down his stubborn resistance, or laying verbal traps, I painted a picture, from the standpoint of the victims, of the crimes they were suspected of having committed.

"I wont ask whether you did commit these robberies, or whether you didn't. But I will ask you to consider the other side. Picture to yourself that peaceful neighborhood where nobody now goes to bed at night feeling secure. Every woman and every little child lives in fear. Every sound alarms and frightens."

After elaborating this picture so that he saw it clearly in his mind, and felt it, I presented the situation from another angle :

"Think what a wonderful thing it would be fo that community to know that the robbers are not only in prison, where they need no longer be feared, but that one of them has revealed all the facts."

This was elaborated, in turn, and led up to what a salesman would call the "closing".

"I know what you are thinking about—you are asking yourselves : 'What good would such a confession do me, a convict here in prison?' I can't promise you any immunity. But think of the possible influence of those people upon your sentence. You're in twenty years. If you did commit those robberies, and make some amends by restoring the peace of mind of those people—some of the most influential citizens in the state—do you suppose it is going to work to your disadvantage? No, you know that if it has any effect upon you at all, it will be good, for the shortening of your term.

"You astonish me" the holdup answered. "Other officers have tried to get information from us by threats, saying that if we didn't 'come clean on these jobs they would fasten other crimes upon us, jobs we had no connection with, and piling up warrants and charges against us, keep us in prison the rest of our lives. Every question they asked, and their whole attitude, simply antagonized us and made us stubborn. You put things in a different way, and I see the advantage of doing what you want me to."

The plan worked well......

The above examples will suggest that the investigator will have to be a psychologist to read the situation correctly and to estimate ahead what methods will serve the purpose in hand best.

Yet another method of dealing successfully with an accused is to subject him to a prolonged questioning in which two or three investigators can take part in turns. This is another 'humane third degree' method and its efficacy lies in the process of breaking the man by the volley of questions and cross-examinations. This method may succeed in the accused giving up bits of information and then being confronted to yield up more. A sort of fatigue and exhaustion may throw him off his guard and make him capable of, or rather prone to giving out unconsciously what he withheld consciously.

I may incidentally refer to the very interesting problem of detection of crime by methods of psycho-analysis. Dr. Girindra Sekhar Bose, M. B., D. Sc., Head of the Department of Psychology, Calcutta University, read an interesting paper on the subject sometime ago. He described the process nicely.

The psycho-analyst, by the method of Free Association and Dream-analysis, finds out the hidden unconscious motives of his subject. These unconscious motives tend to come out in conscious behaviour in some form or other. The conscious and wilfully hidden motives similarly, try to find expression in many different reactions and the same methods of psycho-analysis as used in the finding of the unconscious factors, may be utilized here also. Freud has propounded the dictum that he "who has eyes to see and ears to hear, the world cannot hold any secrets from him." Commonsense tells us that the guilty mind is always suspicious and manifests itself in queer fashions. This we have seen in a previous section where I detailed the "Charmed-rice Ordeal" and other crude processes for determining guilt.

The criminal when confronted with the charge of guilt, behaves in a manner different from the innocent individual. A thief when in company would not like discussions to turn on the topic of theft. He would take active measures to divert the conversation to other channels. Many criminals, when brought before the scene of their crimes, break down completely and many show nervous manifestations.

The procedure which is found useful in the detection of crime is known as the "Word-association Test" inaugurated by Jung. In this method the subject is made to sit comfortably and the analyst speaks out certain words to him. The subject is asked to speak out immediately on hearing each word the first thought that comes up in his mind. It has been found that in such condition each subject takes a definite time in reacting to the words. There are also other differences in the manner of reaction. The analyst measures the time of reaction in each case and notes down the replies. After about 100 words have been tried, the subject is required to recall the answers to each word he gave before. It is found that the reproductions are in certain cases inaccurate and in others entirely missed. The reaction-time is usually found to be lengthened when any significant word is uttered by the expert. If a person has stolen a silver watch, the analyst makes out a list of about 100 words including such significant words as "watch", "silver", ' time", "hands", etc. It would be found, if 10 suspects were all subjected to the test, that the actual thief would react to the significant words in a manner different from the other suspects. The test is a very difficult one and requires expert knowledge.

Like all human devices, the test is also open to criticism and men like De Quiros have spoken against the utility of this method. The principle is the same we have described in detailing the early devices of determining guilt, such as the "Charmed-rice Ordeal". The device may yet be perfected.

While describing the early devices of determining guilt, such as the "Charmed-rice Ordeal", I mentioned that the principle underlying them held good and was yielding more objective tests.

The "Lie-detector" is now being tried and perfected in America. It would interest my readers to hear of it.

In 1934, Governor William A. Comstock of Michigan, pardoned Joseph Blazenzits, who had served 17 years of a life-sentence for murder. His innocence was indicated by new evidence, supported by a lie-detector test.

In 1935, David Roy, carpenter, held as a suspicous character in a Fairfield, Maine, murder case, was released after a lie-detector test.

In 1936, A Rock Island Illinois prosecuting attorney subjected 14 murder suspects to a lie-detector test. The detector indicated the innocence of thirteen but pointed an accusing stylus at the 14th : his confession sent him to 90 years' imprisonment.

But none of these cases measured up to the drama of a Chicago lie-detector case which is detailed below :

Five times Illinois' Governor, Henry Horner, had granted execution stays to Joseph Rappaport, 31, dope peddler convicted of murdering a government spy. Fifteen hours before the time set for the execution, Horner was besieged by Rappaport's tearful sister, Rose.

Moved by her emotion, the Governor mentioned that he had great faith in the lie-detector. Rose snatched at this only remaining hope, rushed for a court order to allow the test, and asked the inventor to conduct it. By the time the details were disposed of, Rappaport had only four hours to live.

Interrupting a pinocle game between Rappaport and his guards, the inventor and party filed into the cell. First, a rubber tube was tightened about Rappaport's chest to measure the quickening breath that accompanies lie-telling. Around his arm was wrapped a blood-pressure-measuring cuff, which would detect pressure changes if lies were uttered. Finally, an inking stylus was dropped on a moving sheet of graph paper and droning questions started.

A pack of playing cards was first drawn out and the murderer was instructed to reply 'no' when asked if a card were a card. When this deliberate lie was uttered by the murderer, the inking stylus made a jag nearly an inch high. This would serve as an index for future lies.

The questioning proceeded :

"Is your name Rappaport ?"

"Yes."

"Did you kill Dent ?"

"No."

"Were you present when he was killed ?"

"No."

"Is your home in Cook County ?"

"Yes."

For an hour such questions were put over and over. Then the inventor examined the graphs and reported to Governor Horner : "On the basis of my findings, Rappaport is guilty."

Three hours later the man was put on the electric chair.

Most of the modern tests stem from the work of Dr. William M. Marston. He laid down the principle in 1913 that 'no normal person can lie without effort.' It is impossible to increase one's effort—mental, nervous or otherwise— without increasing the strength of the heartbeat." He proposed the use of sphygmomanometer—familiar blood-pressure apparatus to chart changes.

Dr. Keeler, at North-Western, enlarged on this idea by adding a respiration checking apparatus and a unit for measuring changes in electrical resistance of the skin. Dr. Keeler demonstrates the efficacy of his method by having students draw one card out of a pack of ten. He turns over the cards and asks the students if they drew that one. They are asked to answer "no" each time. With 90% accuracy, his apparatus indicates the particular card that was drawn.

Father W. G. Summers of the Fordhem University discovered the psycho-galvanometer. This works on the basis of the reaction of the glands of perspiration to nervous excitement.

Yet another device in this line consists in the use of "truth-serum". This serum when injected into the body of a suspect acts on his memory and sense-perceptions in such a way that the suspect can tell the truth but not a lie. The use of this serum requires expert knowledge and is said to be dangerous when administerd by laymen.

To sum up, I must recall that the principle I have enunciated here is a very good rule of caution and indicates that a reasonable margin is necessary to be kept out of statements made by human witnesses, however respectable. Our statements are coloured by self-interest, hostile feelings, passive prejudice and even when they are perfectly honest, deceptions played by our senses, intellect, etc., detract much from their reliability. A knowledge of criminal psychology is necessary for the investigating officer to enable him to appraise the value of statements when they are easily forthcoming and to draw them out tactfully when they are not. The various devices that are being tried and perfected seem to be promising. Before these objective tests are perfected, much will depend upon the tact, ability, and sanity of the officers conducting investigation.

The fourth principle we can enunciate is the law of human habit :

4. A man tends to repeat the same kind of act in the same manner by force of habit.

This also looks evident in every sphere of our lives. We are by nature 'repeaters'. In work, in play, and in other phases of our lives, we acquire styles which get fixed as we repeat operations in the same way.

The practical application of this principle so far as criminal investigation goes, lies in the fact that the great majority of criminals are 'specialists.' Each of them ordinarily takes up only one kind of crime for which his traits, his aptitudes, his abilities, and his habits render him most adapted ; and having once adopted this special kind of crime, he adheres to it for life.

The method of investigation resting on this principle is called investigation on the basis of *modus operandi.* The system owes its origin and elaboration to General Atcherley, Chief Constable of the West Riding Police. The system was worked into a practicable scheme which caught on and was tried almost everywhere in the world.

The scheme, as I have said, is founded entirely on the fact that every criminal, in common with every non-criminal, has his own individuality, his idiosyncrasy, which stamps itself upon everything he does. No two people have exactly the same special features; no two have exactly the same characters, either bodily or mental. In every workshop, however many the workers, the foreman can identify the work of every individual worker. In every office, the manager can identify every clerk by his handwriting. Similarly, painters, sculptors, musicians, architects, writers, composers, etc., are all known by their style and the product of each can be assigned by its resemblance to his other products and its difference from the products of other artists. It is the same with criminals.

General Atcherley's system counts identifying marks which are usually ten in number. The points classified by him are:

(1) Class-word—nature of property attacked—hotel, dwelling, shop, etc.

(2) Entry—the point of entry—window, back-door,...

(3) Means—tools that were used, ladder, key,...

(4) Object—kind of goods taken, cash, watches, ornaments,...

(5) Time—the actual time of the commission, —evening, dinner-time, midnight,...

(6) Style—"the alleged profession or calling adopted by a criminal at the time or prior to the commission of the crime". The criminal may pose as a beggar, canvasser, plumber,...

(7) Tale—any information given by the criminal himself. In dacoity cases, the criminals usually silence the inmates by terrifying them with war cries.

(8) Pal—accomplices. All but the simplest crimes are commited by criminals with the help of accomplices.

(9) Transport—vehicles, boats, etc., used for going to and from the scene of occurrence.

(10) Trade-mark—sometimes acts quite unconnected with the object of crime are committed by criminals. This in some cases may be due to superstition.

Thus, under this system, when a crime was commited, a report of the identifying marks was immediately transmitted to a central office at which it was compared with other records. The sphere of enquiries necessarily narrowed down and the enquiries led to good results. The system is usually sound but casual criminals or general practitioners ordinarily defy these details. It is to be understood that after all, a criminal has got brains and that when the door is open, he will not take the unnecessary step of boring a hole in the plinth. The present 'multiple factor' theory also indicates that the criminal may be acted on by various influences and his actions may entail corresponding variation.

The fifth principle that may be enunciated is :

5. Every contact leaves traces.

This may also be called the principle of exchange. When two objects come into contact, something of the first is left on the second and vice versa. Loosely speaking, the culprits leave something back and carry something off. This is almost a corollary of principle No. 1 I have already detailed. This one has, however, some definite practical uses. Examples where the principle is of use may be cited by scores. A dressed man rubbing against a piece of unplaned wood will leave fibres from his clothes with the wood and perhaps carry splinters of wood on with him. A motor-car colliding with a hackney-carriage will similarly exchange materials. Sometimes the exchange is not complete and there is only a one-way transfer.

In cases of murder, hurt, indecent assault, rape, etc., this principle comes handy. Blood of the victim may often be traced in the clothes of the assailant.

The principle of exchange was nicely illustrated in the case of Mrs. Donald, who murdered a little girl aged 8 in Aberdeen and tied her body in a sack. Mrs. Donald was tried and convicted before Lord Aitchison at Edinburgh. Evidence was given as to similarity of the child's hair with hairs on Mrs. Donald's brushes, of the latter's hair with hairs on the sack, of bacilli on the child's underclothing with those on a washing cloth of Mrs. Donald's, etc., etc. The defence protested that all this was speculative, but the details fitting so completely carried conviction.

In Rex. vs. Handley (High Court Justiciary, Glasgow, October, 1926) a hair found upon the trousers of the accused was similar in all respects to the pubic hair of the victim. This was a case of rape and alleged murder.

In most cases of rape or assault in which physical contact occurs, the principle of exchange comes very useful.

The last but the most important law that we may enunciate is :

6. No two things are exactly alike.

This is a law of nature, universal in

application both in respect of living organisms and inanimate things. The universe is apparently composed of similar units of things but these are really very dissimilar. A flock of birds, a shoal of fish, etc., may give the impression that the units are so very similar but when compared minutely each individual organism will be vastly different from another. The vast crowd of stars, the innumerable grains of sand, etc., also look similar, but when viewed with the telescope and the microscope, each unit will appear to be distinctly dissimilar.

The reason for this is that ever-changing environment works on the different units and shapes them differently. The practical application of the principle we have enunciated lies in (1) identification of persons and things ; (2) sifting of traces left by the criminal or other persons ; and (3) the sifting of various articles, etc., that may be affected by handling by, or contact of the criminal. We shall take up one by one.

(Identification is a major problem in all criminal investigations. According to the principle we are considering, the millions and millions of people that have lived, are living, and will live, will present an infinite variety in human features. Naked eye, however, may confuse faces and forms and hasty glances may cause any amount of mistake. As a matter of fact, mistakes of identification have probably been a more fruitful cause of miscarriage of justice than all the other causes put together.) Among notorious instances proving how liable to error the direct evidence of eye-witnesses may be, are the following :

1. The case of Adolph Beck, who was twice wrongfully convicted through his unfortunate resemblance to another man, is notorious. It was only through the accident of postponement of sentence that Beck escaped a second imprisonment after serving the sentence for the first wrongful conviction. The story of Beck dates back to the year 1877, when a man named James Smith was sentenced to five years' imprisonment for obtaining money by false pretences from a number of women. In 1895 complaints were made to the police that a man, posing as Lord Willoughby de Winton, was extracting money from women by pretending to engage them as his housekeeper, and then disappearing with any sums which he could persuade them to lend him. Towards the end of that year one of the dupes saw Beck in Victoria Street, and promptly gave him in charge as the bogus nobleman. At the police-station as many as 15 out of 17 women identified Beck as the man who had robbed them. In addition to this evidence of personal identification, the handwriting of Beck resembled that in letters written by the swindler.

The result of the cumulative evidence was that he was sentenced to 7 years' penal servitude. After three years after he was released on licence in 1901, complaints were again received by the police of similar swindles. Beck was again arrested and this time positively identified by as many as 19 women. He was again tried and convicted but the judge postponed sentence until the following sessions. In the meantime a man who passed by the name of William Thomas was arrested on a charge of swindling in a similar way. His writing upon pawn tickets relating to rings which he had obtained from the women agreed in character with that upon the documents which had been produced at Beck's first trial in 1896. The probability of a terrible blunder struck all concerned and this was proved to be the case when witnesses who had sworn that Beck was the man who had swindled them now admitted that they were wrong, and that they had mistaken him for Thomas. Beck was granted compensation for the unfortunate mistake.

2. A wealthy mill-owner at Gorse Hall, in a lonely part of Cheshire, was stabbed to death by a man who had forced his way into the house. A relative of the deceased, named Howard, was identified by several witnesses as the assailant. He was tried in March, 1910, but he was able to prove conclusively that he was elsewhere at that time. Curiously enough, in September of the following year, another man, an ex-soldier named Wilde, was

put upon his trial for the same offence, and he, too, was identified as the assailant by some of the same witnesses who had previously been positive that Howard was the man ! Both were acquitted and when they were made to stand side by side and shown to the witnesses, the two men were said to be very much alike.

It is needless to multiply instances for they can be met with everywhere and at all times. The chances of error are enormously increased when the identification is based upon a momentary glimpse, upon one in defective light, in disturbed mental condition, etc.

Several instances collected from different sources are referred to in Taylor's *Medical Jurisprudence.*

A curious factor influencing the value of evidence of personal identification is the readiness with which credulous people will accept stories of recognition. It was this that was responsible for the notorious case of Tichborne being dragged on for years.

(Coming to steps that were taken to identify the wrongdoer, we find that branding and mutilation served the dual purpose of punishing the offender by removing an offending part of the body and marking him for life as a criminal. We have spoken of this form of punishment in the part on 'Penology.')

(The need for some system of describing wanted people began at a very early stage of civilization. The system of graphic word picture of a human being was in use in very great antiquity and had been developed to an advanced stage centuries before the Christian era. Traces of the system can be found in ancient Egyptian and ancient Roman records)

(The need for more exact methods of identification and description than had hitherto been in use was then felt and a beginning was made with modern statistical systems. Lambert Quetelet, a Belgian, propounded the thesis that no two human beings were of exactly the same dimensions ; this only a corollory to the wider law we have now been considering. Stevens, warden of the Loubain Prison, put the theory into practice in 1861, starting the physical measurement of criminals entrusted to his charge)

(It was, however, the famous Alphonse Bertillon (1853-1914) who was the true pioneer of anthropometry. He had to face opposition but success came to him in 1882 when the Bureau of Identification was established in Paris, with Bertillon himself as its first director. Bertillon's method consisted in the measurement of certain key parts of the human frame. These measurements fall into three categories, as follows :

(1) Bodily measurements : height, width of outstretched arms, and sitting height.

(2) Head measurements : length of the head, breadth of the head, etc., etc.

(3) Limb measurements : length of left foot, length of left middle and left little finger, length of left arm from the elbow to the top of the outstretched middle finger)

Additional data were incorporated such as colour of hair, eyes, complexion, shape of nose, ears, etc., and body marks, (artificial and natural). These were all placed on a card together with a full-face and profile photograph.

The system marked an advance over what went before, but it was subject to observational errors. It also suffered from the drawback that identification of a person from fragmentary remains of the body was not so easily practicable.

Photography in its earlier days was hailed as a positive means of identification. The practice of making photographs of the scene of crime was started in Switzerland as early as 1860.

Here, again, experience has shown that photography is not wholly reliable. A photograph from one angle may be virtually useless in identifying a person seen only for a short time from another viewpoint. The effect of passing years and the deliberate alteration of features also undermine the efficacy of the system.

This brings us to the system of finger-prints. The system is of comparatively recent origin. The first attempt by Europeans to make use of the characteristic ridges of the fingers to record the identity of individuals is said to have been made by Sir William Herschel, who introduced a method officially in Bengal. This was in 1858 and the device proved so successful that Sir Herschel made a continued study of the use of finger-prints. The system caught on and it was introduced into the prisons. Sir Herschel tried to extend the use still further but this attempt did not meet with success.

The connection between individuality and the prints left by fingers is said to have been recognized long ago by the Chinese. But the matter was evidently crudely conceived. In ancient Babylon, too, finger-prints are said to have been in use. Even before Herschel, Marcollo Malpighi, (1628-94) one of the pioneers of the microscope made a proper scientific description of the ridge patterns on the fingers. The records of observations were complete but his interest was not directed to the finger-print system now of such universal use. Other workers whose names are associated with the system are Professor J. E. Pukenje, Sir Francis Galton, and Dr. Henry Faulds.

The subsequent history of the system would include the Committee of Investigation that was appointed in 1897 to consider finger-print identification in India. It advised the adoption of a scientific system of classification developed by Sir E. R. Henry from Galton's system of classification. Sir Henry deserves special notice here as he happened to be a former Inspector-General of Police of Bengal.

Following this, and a few committees in England, the Galton-Henry system was adopted throughout England and Wales as a primary means of identification, about 1901. Since that time the system has come into world-wide use. America was quick in following and a great advance was made in 1923. A Federal Finger-print Bureau was established to collate the records built up in the police departments in the individual states.

Finger-prints are the impressions left by the extremely complex system of ridges and depressions that are seen on every human finger. The constant fatty secretion from the glands provides a medium that leaves a print on any suitable surface. A valuable characteristic is that the ridges form the same patterns throughout one's life. Sir William Herschel made test impressions of his own ridge patterns at the age of 28 and compared them with prints made 54 years later. He found that there was no fundamental change.) This has been confirmed by researches of various other workers. Another important characteristic is the fact that illness, wounds, burning, and accidental damage are all impotent in destroying the basic characteristics of the ridge patterns. Natural growth of the individual does not also affect the disposition of the patterns.)

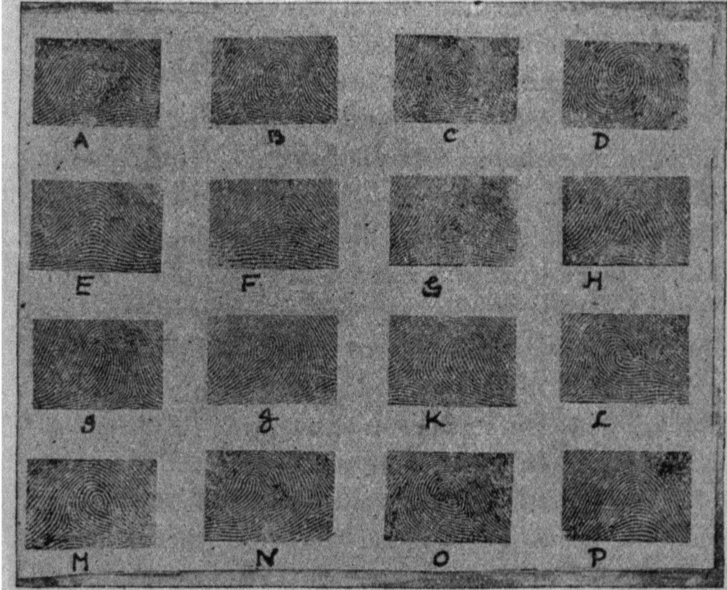
(A convenient working plan was evolved by the system of classification of the finger-prints. It has been shown that these prints fall into one of several well-defined groups, which can themselves be systematically subdivided for ease of reference and study.

It is not possible for me to detail the classification in a general treatise of the nature of the present work. The system nicely fits in the law we are now considering, namely, *no two things are exactly alike.* Finger-prints of two men do not coincide exactly. It is as sure a rule as human rules can be)

(The various patterns, may, as a rule, be classified into four main types, namely, Arches, Loops, Whorls, and Composites. Finger-prints are further divided into nine primary classes, to each of which a descriptive name has been given. These are :

Plain Arch.
Tented Arch.
Exceptional Arch.
Whorl.
Plain Loop.
Central Pocket Loop.
Twinned Loop.
Lateral Pocket Loop.
Accidental.)

Some of these types are more common than others. The illustration adapted below (No. 4) will show some of the various classes.



(4)

(A) (B) (C) (D) Whorls with different types of cores.
(E) (F) (G) (H) Plain Arch, Arch with trend of ridges to left, Arch with trend of ridges to right, Tented Arch.
(I) (J) (K) (L) Plain and converging Loops.
(M) (N) (O) (P) Central Pocket Loop, Twinned Loop, Lateral Pocket Loop, Accidental.

It is to be understood that these divisions vary in details at different bureaus, the fundamentals remaining the same.

For record, a complete set of prints from all fingers is taken. The apparatus required for making good impressions is simple and inexpensive and the ease with which prints can be taken makes finger-printing universally possible. Printers' Ink is usually employed, it being rolled out to a very thin, uniform film on a metal sheet or block, a rubber-covered roller being used for spreading the ink. Fingers are thoroughly cleaned with ether or benzol, in order to remove traces of greasiness, and soap and water also may with care be used. For official records, these prints are made on special forms. When completed, these forms are sent to the Central Finger Print

Bureau for search to discover if the prints are already on record, and are then filed under proper classification.

A system which will successfully deal with the problem of the classification and identification of single finger marks which may be found at scenes of crime has lately been developed.

The principal feature of the new system is that circular areas are defined for scrutiny by means of a magnifying glass with a specially prepared window at the base. By means of the glass, circle readings are taken of deltas and cores, which in conjunction with sub-classification effected according to formations of cores, provide a large number of definite and reliable groups. These can also be utilized to very great advantage in breaking up unwieldy accumulations in the Main Finger Print Collections.

Another feature is that prints of the ten digits are filed separately, thus reducing search to a minimum when, as frequently happens, it is possible to determine the particular finger responsible for an impression.

The real difficulty is in the technique of developing accidental impressions from the scene of a crime. All articles and surfaces that may have been handled by criminals are carefully examined. Those that show traces of prints are then treated with some medium that brings up the prints boldly so that they can either be traced or photographed. Various powders are used. Thus a black powder, such as finely powdered lampblack, will suit the case of prints on papers. Charcoal powder is also frequently used. All black or dark powders are equally applicable to such surfaces as those of porcelain or white china) Prints upon polished surfaces such as furniture or glass-windows are treated with a fine powder such as magnesium carbonate, graphite or an aniline dye, the excess of which is blown or dusted off, leaving the pattern of the ridges outlined in the powder. The use of reagents in the form of vapour is often found more satisfactory than that of either powders or liquids. Iodine vapour, for instance, will develop a finger-print very sharply for many months after it was left on paper. It has, however, the drawback of being fugitive, so that the developed print will soon fade away again. The vapour of osmic acid, on the other hand, leaves a permanent stain, although it is much less sensitive than iodine vapour. For dark materials and glass, a light-coloured powder is necessary. White lead, chalk, chalk and mercury mixed, plaster-of-Paris, and aluminium, all in finely powdered form, are the agents most employed in these cases. Metallic surfaces yield impressions best when treated with copper powder, while for apples and oranges, and most fruits with a hard rind, carbonate-of-lead powder is the most suitable. Articles such as shirts, collars, handkerchiefs, etc., require to be specially treated. A fine camel-hair brush comes handy in applying the necessary powder to the position of a suspected print.

The primary aim in developing prints so available at a scene of crime is to establish identity of the criminal, either by comparison with existing records in the bureau, or as a check on an arrest that has been made as the result of collateral enquiries. The finger-print itself can, over and above this, yield a certain amount of information as to the age or occupation of the criminal.

The infallibility of identity established by finger-prints is an important feature, although it has been vaguely asserted that a forgery with respect to these prints is possible. For all practical purposes, the evidence afforded can be relied on and is actually done so. In simplicity and accuracy, finger-printing still stands ahead of all other methods of identification. In the case of William West, a Negro, committed to the U.S. Penitentiary at Leavenworth, Kansas, a confusion under the Bertillon system arose as to his identity with another man with whose record West's tallied remarkably. Finger-prints, however, indicated that the two men were totally different.

Innumerable are the instances in which all over the world criminals have been traced by means of a comparison of accidental finger-prints left on scenes of crime. I shall quote two remarkable instances :

(1) A burglar arrested at Hitchin on 27th. August, 1929, was traced as responsible for a number of burglaries committed by him all over England. He committed crimes at Watford on 20/21 July, 1928, at Staplehill on 12/13 August, 1928, at Stinchcombe on 16—19 August, 1928, at Chipping Sodbury on 27/28 August, 1928, at Harpenden on 25—26 September, 1928, at Rugby on 10/11 October, 1928, at Redbourne on 25th. December, 1938, at Loughborough on 1—2 June, 1929, and at King's Langley on 24th. July, 1929. Thus was a burglar tracked by his finger-prints all over and a series of crimes committed in course of a year were all traced to him. It

may also be noted that the detection of burglary, a form of crime which is so very dificult to solve, will depend steadily more and more on the use of finger-prints.

(2) This is a sensational case reported only the other day. The case was flashed with a heading "£40,000,000 Drug King Found Shot in U. S. Fraud Drama." Francis Donald Coster, President of the £17,000,000 McKesson and Robbins Corporation, one of the world's greatest drug companies, shot himself dead as detectives walked up the drive of his Connecticut Home to arrest him for a £3,600,000 fraud. The account was published by the "Daily Express".

For years he had been one of the inner ring of America's Big Business leaders. The firm he controlled had an annual turn-over of £40,000,000.

His suicide is only one of the sensations that have followed fast on the revelations made that Francis Donald Coster was not his name at all.

Finger-prints had identified him as Phillip Musica, who 25 years ago was jailed for a £400,000 "human hair" swindle.

The charge against him in 1913 was of swindling New York banks by means of faked reports about shipments of human hair consigned to him.

There were non-existent agents and faked packing-cases in the human hair affair. There were non-existent agents and packing-cases in this affair too.

These odd parallels set New York's chief investigator of financial scandals thinking. As a long shot he ordered finger-prints of Francis Donald Coster to be compared with those of the central figure in the human hair case, Phillip Musica.

The investigator was surprised to find them match !

So he ordered detectives to go to the house in Fairhaven where Coster had been "seriously ill" since the investigation into the company he headed had begun.

As they neared the front door a curtain on an upper floor was pulled aside, then dropped. A second later there was a shot. The detectives ran to a bath-room, broke open the locked door and found Coster slumped across the bath, fully dressed, shot through the head ! A revolver lay on the floor beside him.

It may be noted that the sensational "Bhowal Sanyasi Case" of Bengal which is yet on before the courts could have long been solved if only a single finger-impression of the real *Kumar* had been on record somewhere.

The principle we have been discussing, namely, "no two things are exactly alike", is practically illustrated by another process, namely, poroscopy, an ancillary to the finger-print system. Poroscopy, as the name implies, is the count of the pores, the number and distribution of these minute orifices being completely individual. Poroscopy is also used as a means of identification or confirmation. Dr. Edmond Locard, Director of the *Laboratoire de Police Technique*, is the leading exponent of this system. In a pamphlet issued recently, Dr. Locard said, "Summing up by their threefold character of unchangeability, persistence and variety, the sweat glands constitute a primary means of identification." The system is in practical use in France and has already proved promising. The principle is the same, namely, that the pore openings upon the ridges are distinctive in size, shape, and position, that they vary as widely as do the patterns themselves in the case of different individuals and that they are equally permanent.

Footprints further illustrate the law we have enunciated and considerable use is being made in preserving and developing footprints at the scenes of crime for comparison. In India, the criminals mostly go barefooted. Wilder and Wentworth have shown that various portions of the footprint might be used for the purpose of differentiation and classification, but that the system which so far appears to be the simplest and most comprehensive is that which is based upon the patterns upon the ball of the great toe and upon the areas at the base of the other toes.

A footprint left by a criminial is a very tangible thing and can be detected even by an untrained eye. The difficulty is that before the police arrive, all sorts of people visit the spot of crime and leave their own footprints everywhere.

Tracings of footprints show the outlines, whereas a mould presents a footprint in its entirety and is like the image of a living foot. Plaster of Paris and wax are generally used for taking moulds. The practical use of the method of identification by means of comparison of footprints is also great but is not so great as that by means of finger-prints.

Palm-print is only an extended use of the same principle as underlying finger-and footprints. Detective Sergeant Vaughan Sharp, of the South African Criminal Bureau, Cape Town, has brought out a publication embodying his researches in this direction. The publication is titled "Palm Prints: their classification and identification." I need not go into details as the principle is already apparent.

The law we have enunciated is capable of immense uses over and above those already quoted. For example, patterns formed by the friction ridges of the skin may also be of use. As a matter of fact, the principle can be extended to any part of the body.

So far with regard to identification of criminals from impressions left by them. Our law extends to traces and actions of criminals as well. We shall take up study of hair, blood, semen and excrement, etc., in one group and handwriting, forgery, etc., in another.

Human hair differs from hairs of other animals. It also marks an individuality like other parts of the body. In the notorious case of Hannah Dobbs, who was tried in 1879 for the murder of her mistress, the hair on the mutilated remains, associated with a deformed spine, was accepted as proof of their identity. In the Crippen case, similarly, a link in the chain of facts establishing the identity of the remains was the fact that the hair agreed in every respect with that of the missing woman.

The microscope has afforded the opportunity of such a minute thing as a hair being examined in details.

Our principle comes handy in the province of forensic medicine. Crimes against the person, in which medical examinations are required afford room for tracing the culprit by comparison of blood, semen, etc.

Blood-tests form an important part of forensic chemistry. Blood-stained articles or clothings are often found on the victim, on the suspect, and at the scene of crime. Blood-stains may be left on the person and on the ground.

The questions that may be asked with regard to such blood or blood-stains are usually : Is the suspected blood or blood-stain actually blood or real blood-stain ? If so, what kind of blood is it ?—human or non-human ? If the latter, mammalian or otherwise ? How old is the stain ? How was the stain caused ? If by human blood, was it of the victim or of the suspect ? And so on.

Various chemical tests are available for establishing beyond doubt whether the stain is blood. I am not called upon to enter into these technical tests and devices. The technique is elaborate and has nearly been perfected.

Blood-stains may be found on clothing, as we have said, and on walls, on knives, and other weapons of offence. The practical utility of having such stains examined and declared as human blood lies in the fact that in recent times it has been found possible for a stain to be assigned to a particular group depending upon the way in which the blood-corpuscles agglutinate. It has been found that there are four definite blood-groups, to one of which the blood of any individual can be assigned.

It has been found recently that tests may sometimes be of value in determining the paternity of the offspring. Thus it has been found that if parents are both of group (ii), or one is of group (ii) and one of group (iv), the blood of the offspring may belong to either group (ii) or group (iv), but cannot be of group (i) or group (iii).

It is interesting to note that the question of making blood-tests in contested cases of paternity compulsory was discussed in the *Law Journal.* It dealt with two objections commonly made, namely, the infliction of a wound on reluctant persons and the cost to the public. Both these objections were overruled as flimsy. It was considered foolish to refuse the use of a scientific aid which, within its limits, is certain in its results. Very few of the defendants in affiliation cases are innocent, but the innocent should be refused no aid which can be given to enable them to rebut a false charge.

Seminal stains on clothing and other exhibits may be detected in cases of gross indecent assaults, carnal knowledge, and other sexual crimes. To identify a seminal stain, it becomes necessary to soak the actual spermatozoa off the garment ánd to prepare a permanent microscopical preparation. The three stages of the actual examination consist in (1) preliminary examination, (2) chemical examination, and (3) final microscopical examination. A garment suspected is first examined under the ultra-violet lamp and those areas which flouresce are ringed down with a pencil to be further examined. The chemical examination by means of the Florence Test is performed by treating an extract of the stain with a solution of iodine and potassium iodide. The preparation is then examined microscopically for the presence of small, dark-brown crystals. The sperms are fragile and heads are found separated from tails. The find of at least one complete sperm is deemed necessary to carry conviction. The process of such minute examination has been carried so far that there have been a number of cases in which a man has been exonerated of a charge of rape by an examination of his own blood and the group of the seminal stain.

Our law holds good in the case of handwriting and forgeries equally well. It is a common experience how on getting letters from our friends and correspondents, we at once know from the handwriting on the top of the envelope from whom a letter is coming. We invariably know the writer if he has been writing to us. The handwriting of a stranger strikes us at once and we wonder who may thus be writing to us.

Scientific criminology as applied to records and documents covers a very wide field of enquiry. Questions arise as to the genuineness or otherwise of letters, signatures, entries in office records, etc. They may arise in respect of the age of papers and inks, the character of inks and pencil marks, peculiarities of handwriting and typewriting, etc., etc.

It becomes necessary in course of enquiries to determine the type and nature of the paper used. According to our maxim one type of paper should be discernible from another. A document dated, say 1790, could not be genuine if it was written on wood-pulp-paper, which was not available until nearly a century later. Stains and age marks on documents indicate a great deal and watermarks may be of utmost importance in determining age of a paper. Inks may be chemically tested and the interpolated portion declared suspect. Typewriting also affords clues as it may be safely held that no two typewriters wear alike and each develops its own characteristic faults of alignment, etc., as a result of wear.

Our law will indicate that like all other things, all kinds of writing, whether in pen or pencil, will show characteristically different features. The sequence of strokes is an important point to count. Microscope comes of help and reveals features boldly.

Thus, in handwriting, very many factors are to be taken into consideration, such as skips, the slant, alignment, spacing, proportion, defects, pressure on the pen or pencil, and attempts at disguise. There are so many points of comparison that an expert can always detect the spurious writing. Additions and alterations to the letters become clearly visible when magnified. 0 altered to 9 or 3 to 8 will easily show up.

Forgeries, particularly of signature, are often made from a carbon copy of an original, which is transposed to the desired document and carefully inked in. The microscope quickly reveals such attempts.

Note-forgeries are easily detectable. The imitations are often clumsy and the first man cheated is often able to detect the forgery.

Mitchell in his book 'Science and the Criminal' quotes some remarkable forgery trials. The cases of William Hail, Caroline Rudd, the Reverend Dr. Dodd—are all interesting. We have already seen how forgery was for a long time a capital offence.

We now come to the application of our law to what we may call inanimate objects. As we have seen, various things in nature strike us as similar but they are really dissimilar. We are only required to probe the features minutely to be able to discover differences.

The province of Forensic Ballistics consists in the scrutiny of firearms and ammunition, and the examination of the problems arising from their use, for purposes of legal evidence. In an article in two issues of the Bengal Police Magazine, 1938, Mr. A. D. Gordon, Inspector-General of Police, Bengal, has lucidly explained the elements of problems connected with firearms. The main burden of enquiries is in many cases to establish whether a given bullet or cartridge was used in a particular weapon. Other problems that arise from time to time are connected with the distance from which a shot was fired, the time when a weapon was last fired, and so on.

The development of Forensic Ballistics is due largely to the perfection of the microscope and the technique developed is too abstruse to be described in this general treatise. Our law is the guide in all comparisons.

Like firearms, again, other tools and weapons obey our law and afford room for identification. No two weapons are exactly alike and each will be marked by its own individuality.

In the case of poisons, our law affords proof of the particular type of poison that may have been used. So much has been done in this field, viz., toxicology, that no poison is likely to remain undetected to the searches of the modern medical jurist.

Arsenic is a favourite with ignorant poisoners and very many deaths are due to arsenic poisoning. Court records are full of cases in which bodies exhumed at considerable periods after death, have revealed traces of this poison. The Pakur murder case which is one of the most notable murder cases of India related to the use of plague bacilli. I have detailed this very interesting case in Appendix B in connection with the offence of murder. Notable poisoning trials are known as the cases of Chapman, Palmer, Freeman, and others. The details of these cases may be read in Mitchell's 'Science and the Criminal'. Few cases have aroused so much controversy as that of Mrs. Maybrick who was tried in 1889 on the charge of having poisoned her husband with arsenic. The case was tried by Sir Justice Stephen who himself admitted that 'the case of Mrs. Maybrick was the only case in which there could be any doubt about the fact'.

Our law can be extended to such negligible things as dust and rags. The analysis of dust often shows that it preserves distinctive characteristics sufficiently to enable one to recognize its origin. Trousers and footwear commonly carry the common dust. Dusts of animal origin are formed by small insects, butterfly scales, eggs, products of the composition of all sorts of organisms, etc., etc. It is essential to remember that every individual is the bearer, inspite of himself, of certain dust which may be termed "professional". Thus a miner will carry coal dust, a librarian paper dust, a weaver cotton dust, and so on.

Our law applies equally well to bits of rags or pieces of cloth. The textile expert can differentiate between two pieces of cloth and connect a piece with the main body of the cloth.

In fact, our law is capable of infinite application. As we are perfecting our weapons of observation, we are making more and more extended use of this law. We are attacking the minutest particles in order to yield us information.

A mysterious murder case was lately solved by means of the identigraph, a magnifying machine invented by Dr. Carleton Simon. The only clue was a tiny strip of a feather no larger than the tip of the nail on a man's finger, found on the carpet at the body of the victim, a seamstress who lived alone. Under the identigraph which magnifies things thousandfold, the fragment of feather was revealed to be that of a humming bird. The police located and arrested a man, already under suspicion, after learning that he had caught a humming bird the day before the murder. The man was convicted.

I have attempted to survey the entire field of criminal investigation, although in a sketchy manner. The main point is to remember the various principles I have enunciated. I have by no means exhausted them. I shall be glad if my readers can discover other principles on these lines. The principles we have so far discussed do thread most of the diverse processes and phenomena of criminal investigation.

It must, however, be remembered that no single maxim will suit every case but every case will afford room for application of all, at least most, of the principles we have discussed. Modern science has achieved wonders in every field ; it has done so no less in the field of criminal investigation. Various countries however, have utilized scientific aids to varying extents. France took a practical lead and contributed the Bertillon system of identification, as we have seen. A great deal of research work is being done with a view to evolving new weapons of attack on crime. The laboratory is fully equipped and the French detective has the fullest scientific backing right from the start. Dr. Edmond Locard, the head of the police laboratory, has contributed immensely to scientific criminology.

The United States of America can also claim to have made extensive use of scientific aids in the battle against crime. One of the chief centres is the Crime Laboratory of the National

Bureau of Standards where continued research work is being done. Dr. E. M. Hudson, Director of Scientific Research, New York Police Department, is an eminent authority on scientific criminology. I have already spoken of the Keeler Polygraph, the Lie Detector. I have also spoken of the "Truth Serum."

The position of Britain in Scientific Criminology is very high. Scotland Yard is known all over the world for organized records of crimes and criminals and for expert detection. There are in Britain men of the highest scientific attainments well able to deal with every kind of criminal investigation. If only to illustrate how thoroughly a case is worked up from unpromising beginnings, I shall quote the Buck Ruxton case which provided sensation to the whole world.

Dr. Buck Ruxton was tried in March, 1936, for the murder of Isabella Ruxton in the previous September. In a Scottish stream, a collection of human remains were discovered, partly wrapped in bundles and partly scattered. These consisted of various bones and pieces of flesh, all of which had been badly mutilated with the intention obviously of preventing recognition. Experts wondered whether it was a male or female body. The pieces were assembled and collective research ended in find of two bodies. Parts in both were missing.

The work of reconstruction of the parts with a view to tracing the identities of the two bodies was carried on with such amazing dexterity that the jury was able to accept the identification of the remains as those of Isabella Ruxton and Ruxton's maid, Mary Rogerson. In both the cases death was traced to be due to asphyxiation ; the wounds discovered on one body had been inflicted after death. Evidence concerning bloodstains was also given. The police cut away all pipes leading from the bathroom of Dr. Ruxton and examined them. Blood-stained carpets, stair-pads, etc., were also examined. A very interesting feature was that photographs of the missing women were enlarged to life-size and superimposed on photographs of the skulls to form composite photographs showing striking agreement. This use of photography is believed to have been unique and was comparable with the reconstructions in the la Rosa case at New York. Palm-prints were found to agree with impressions discovered in various places in the Ruxton household. The whole case was a triumph for scientific investigation in which all sorts of expert help were pooled together.

Apart from these points of scientific interest, the story of the crime is itself interesting and worth touching upon in brief, here.

Dr. Ruxton was a French-Indian and he promised much in surgery. He came to practise in Lancaster. He was of a jealous and suspicious nature and very often imagined men were making love to his wife when in fact they were paying the usual courtesy. He and his wife lived happily for a few years although domestic disputes arose at frequent intervals. Mary Rogerson was their maid and had witnessed many of the numerous disputes. Ruxton was so severe that on one occasion when his wife had danced with another man at a local function, he made her perform an act of penance by running in bare feet 50 times up and down the stairs while he stood at the bottom with an unsheathed knife. The reasonable story that could be reconstructed with respect to the murder is that given by H. J. Vann in the Police Journal as follows :

On the night of Saturday, the 14th Sept, 1935, Mrs. Ruxton went to Blackpool to meet her sister, Mrs. Nelson, who was going there from Edinburgh on a day-trip. As a result of the previous weeks' happening, when Ruxton followed his wife in a hired car to Edinburgh, where she stayed at a certain hotel, he was of the opinion that she had arranged to meet a young man in Blackpool on this evening. Consumed with rage, he waited on this occasion for her return. She reached the top flight of stairs and was most probably challenged. An altercation ensued and she was strangled and, possibly further, stabbed. The maid possibly appeared on the scene on hearing cries and as she happened to be the only witness, Ruxton disposed of her also. When the heat of the struggle was over Ruxton found himself with two dead bodies on the top flight of the stairs. Naturally the problem was how to get rid of them. Presumably, again, his medical knowledge suggested that he should dissect the bodies into portions capable of being removed without arousing suspicion. Possibly, again, he guessed that it would be safer to throw the remains outside the boundary of England. He might have then proceeded on with the work of dissection and made small bundles of the remains to be carried along.

The disappearance of Mrs. Ruxton and the maid drew suspicion. The maid's family had been making enquiries as to her whereabouts but

Ruxton put them off saying that she was out with Mrs. Ruxton and that she had been procuring an abortion. The family were not satisfied and in due course the Lancaster Police circulated the news with a description of Mary Rogerson. The fact that Ruxton was a doctor drew suspicion and when Ruxton was examined he gave suspicious accounts of the two women and of his own movements.

The collateral evidence was overwhelming and the case against Ruxton ended in conviction.

Cases like this are hall-marks of the efficiency of the British police. The only thing that has been urged by writers like Nigel Morland is that there is need for a means of co-ordinating the manifest talents of the various scientific experts so as to form a smooth working machine for dealing with all problems, as a matter of routine.

Morland quotes Rhodes who complained :

> Experts are extensively employed in this country, but they are not officially attached to the police. It is our want of organization, and not our use of science, which is at fault. The policeman does not understand the scientific man, nor the scientific man the policeman. Nor will they ever understand each other until they work together.

The need for the establishment of a Medico-Legal institute in England had thus been felt.

A committee was appointed in April, 1935, "to advise the Secretary of State for the Home Department as to the manner in which the Laboratory for the Scientific Investigation of Crime, about to be established in the Metropolitan Police Force may best be developed in the national interest, with special regard to the desirability of its being in close and effective touch on the one hand with other police institutions established in this or other countries for the like or cognate purposes and on the other hand with any Medico-Legal or Scientific Medicine Institute that might be constituted for teaching and research work............" Since its appointment the Metropolitan Police Laboraty has been established and, the Committee was of opinion, on sound lines. It must still be in the initial stage but the Committee was satisfied that "its development may be expected to follow naturally upon an increasing realization of its value as a part of the crime-fighting machine".

India, as I have said in many connections, is deplorably backward in scientific equipments. The thesis of the present work has been to bring home to the Indian public and administration the deficiencies and possibilities in this field. I would ask any reader to turn over to any standard work on criminology and try to discover even a mention of India. This subcontinent has problems of its own and if those disucssed in this book serve to draw attention of people abroad to them, I shall feel gratified. The need for a scientific centre for All-India should be felt still more now in view of the impending federation. The establishment of an All-India Institute for research in Scientific Criminology will not only tackle Indian problems but will be able in the long run to contribute to the world-thought about crime. Such a centre will be dependent not only on the initiative of its staff but will encourage research activities all over by making the institute a recognized centre to which problems of research should be referred by outside bodies and workers inside India. It will be in a position to keep in close touch with other institutions of the world that are and may be carrying out researches in related spheres.

The unending march of science is opening fresh and fresher possibilities for attacking the problems of crime. Criminology will go forward just as other departments of human life and activity are enlarging scope with the aid of science. To-day, with its manifold resources, Scientific Criminology comes to the aid of the human society as against the criminal. It would be as foolish for a country not to avail of its uses as it would be for a country not to avail of the progressive appliances and remedies of the medical sciences.

CHAPTER XXV

GENERAL REMEDIES, PREVENTION, AND CONCLUSION

I shall make this chapter the last one although many things remain yet unsaid. I refrain from attempting a resume as practically every topic of criminal sociology discussed is important and I do not know which to select for recapitulation. I shall therefore squeeze in this chapter the sketchiest outlines of things not said so far.

The most important thing is the need for the shift of the emphasis from the crime to the criminal. The main point emphasized by scientific criminology has been this. The shift indicates sweeping changes in the present methods of social defence. These include the better organization of the police, the swifter collection of evidence, and the more effective treatment of the offender after conviction.

The task of identifying the offender is a difficult one; that of bringing an offence home to him is more difficult and, at present, highly problematic. The problem so far as society is concerned should be to know whether the offender *was* responsible for the crime and not whether he can be *proved* to have done it. Society is concerned with the prevention of a recurrence of the particular crime more than the suffering of the criminal. Society should want to know why and under what circumstances the offender committed the crime and then whether he is, and how he can be best treated.

The present court procedure determines guilt and fixes the nature and extent of punishment. The process is amusingly complicated. In the place of the present criminal trial a scientific programme would substitute a group of men trained in criminology, sociology, and the techniques of weighing evidence. No one officially connected with an investigation should have any other interest in the outcome than the learning of the truth and the disposition of the case in accordance with the best interests of society. In the present procedure we have much that could justify, however partially, Swift's satirical thrusts against the process of law.

The essential business of trial should be to determine a question of fact : Did the accused commit the crime ? The process, however, involves tricks and surprises so amusing that the criminal trial is still regarded as a principal amusement. Each side tries to win the case and takes advantage of every possible trick, surprise, and technical device. It looks as though everybody excepting the judge who is supposed to be holding the balance evenly is concerned in a fierce battle in which wit, jugglery, deception, and other psychological weapons of offence and defence are resorted to. Or rather, the whole thing reminds one of the haggling and bargaining that is so characteristic in markets in the East. It is like the shopkeeper asking the value, and then acting, with voice and face and gesture, the several stages of benevolence, of indignation, of cold reason, of tearful exhortations, of broken surrender, and the buyer for his part playing up with contempt, indifference, bluff, and whatever else he can summon, before the price is agreed upon and squeezed out coin by coin.

A small committee of scientific technicians could go into the whole case of a crime without all these fuss and ruffle and determine who, if anybody, was the author of a crime. Much of the romance will be gone but the process will gain enormously. The process will be as cool as a scientific experiment. It will be like one in the method "of sale without bargain" wherein the master and the servant pay the same price and get the same goods. The present procedure unfortunately does discriminate and the poor and the rich fare differently in the combat. If the process remains a gamble as it is partially now, the resourceful blackguard will have ample room for taking sporting chances. Sumptuous fees paid to the skilled lawyers will always bring out minor points which are usually magnified with advantage. It does often give the impression that "laws are like cobwebs, which catch small flies, but let wasps and hornets through."

It may be contended that in the case of such enquiries by Scientific Technicians, the accused will be badly prejudiced. It is here that it should be emphasized boldly that these technicians *will be* judges themselves and will be free and independent in their enquiries. They will be exclusively concerned with finding the bare truth. The judicial frame of mind of which I have spoken at length will be required of every unit in the machinery of justice and not only of a particular set as at present. The police will have to take an increased responsibility and command more confidence. As a matter of fact, as I have said elsewhere, the necessary but partially conflicting principles that no innocent person shall be harassed or embarrassed and that every criminal will be brought to book, will have to be calmly bridged.

In saying all this, I am, of course, visualizing things yet distant. A goal, however, is best kept in view.

With the socialization of criminal procedure the question of punishment can be omitted. It will be supplanted rather by the question of treatment. In a great many cases the criminal is mainly a product of environment and in many, one of imperfect heredity. Clinicians will treat the latter and understanding social agencies deal with the former. In many cases restrictions of liberty will have to be ordained but with none of the retributive ill-will. The efficacy of punishment is being increasingly questioned and I have spoken on the topic at length. Where correction is impossible, criminals should be permanently segregated so that they can no more harm society. In other cases the causes of antisocial behaviour will have to be determined and counteracted.

This is, again, looking a far way ahead. A reconciliation between the disputants in all ordinary cases is eminently desirable. Professor Meade finds that 'the two attitudes, that of control of crime by hostile procedure of the law, and that of control through comprehension of social and sociological conditions cannot be combined.' To understand is to forgive; on the other hand, pursuit by criminal justice inevitably awakens the hostile attitude in the offender. The severe treatment of law that an offender receives hardly reforms him. It makes him hostile still more. The process of law at present may be likened to the grinding machine which will injure all. It may look like a truism, but it is really true, that punishment instead of being a deterrent often conduces to more crime. In a vast majority of cases, the process encourages a sort of enduring feudal warfare between the criminal and the complainant and the witnesses. There is a common saying that "he who goes a-borrowing goes a-sorrowing." It is equally true that he who goes to law goes to war,—endless and destructive. Many are the cases that must be known to my readers where even such an apparently innocent action at law as the civil suit gives rise to an endless series of cases and counter-cases. Families have been ruined by such a sort of mutual litigation. It is nearly the same with criminal cases. Bernard Shaw in his characteristically brilliant way illustrates the point from his own experience. He says:

It may be said that whatever the losses and inconvenience may be, it is a public duty to prosecute. But is it ? Is it not a Christian duty not to prosecute ? A man stole 500 pounds from me by a trick. He speculated in my character with subtlety and success ; and yet he ran risks of detection which no quite sensible man would have ventured on. It was assumed that I would resort to the police. I asked why. The answer was that he should be punished to deter others from similar crimes. I naturally said, "You have been punishing people cruelly for more than a century for this kind of fraud ; and the result is that I am robbed of 500 pounds. Evidently your deterrence does not deter. What it does do is to torment the swindler for years, and then throw him back upon society a worse man in every respect, with no other employment open to him except that of fresh swindling. Besides, your elaborate arrangements to deter me from prosecuting are convincing and effective. I could earn 500 pounds by useful work in the time it would take to prosecute this man vindictively and worse than uselessly. So I wish him joy of his booty, and invite him to swindle me again if he can." Now this was not sentimentality. I am not a bit fonder of being swindled than other people ; and if society would treat swindlers properly I should denounce them without the slightest remorse, and not grudge a reasonable expenditure of time and energy in the business. But to throw good money after bad setting to work a wicked and mischievous routine of evil would be to stamp myself as a worse man than the swindler, who earned the money more energetically, and appropriated it in no more unjustly, if less legally, than I earn and appropriate my dividends.

It is possibly because Shaw was not satisfied with the treatment that the society would have meted out to the swindler that he refrained from his pursuit. We, however, get the case for compromise put more beautifully by Shaw himself thus :

> A punishment system means a pardon system. The two go together inseparably. Once admit that if I do something wicked to you we are quits when you do something equally wicked to me and you are bound to admit also that the two blacks make a white. Our criminal system is an organized attempt to produce white by two blacks. Common sense should doggedly refuse to believe that evil can be abolished by duplicating it. But common sense is not so logical ; and thus we get the present grotesque spectacle of a judge committing thousands of horrible crime in order that thousands of criminals may feel that they have balanced their moral account.

We see here the case for "amicable compromises" beautifully stated. One must not imagine that every coarse or vulgar act, every little violation of right, may demand suppression by punishment. The State, like the individual, must learn to endure many minor inequities ; it must be remembered that the world will not immediately come to an end and that nature has guarded against the trees growing up to the sky, and it must have confidence in the firmness of its own and in the natural effective powers of moral opinions. A great many of the disputes now thrashed in courts with all the guile and the necessary expense and anxiety may be handled by "conciliation courts" which may bring about understanding instead of heightening misunderstanding. Cases so dealt with will be more deterrent in the real sense.

This was only a side-issue but none the less important. The great hopeful goal ahead of humanity must, however, be "prevention". This is a topic which would require a volume by itself and we can only touch the fringe of it here.

The great contribution of the positive school has been the emphasis it has laid on prevention of crime. Prevention has always been known to be better than cure. Medical science has done a great deal in prescribing rules of hygiene, which when duly observed reduce the necessity for drastic curative treatment.

The idea of prevention did not carry so much favour till recently because of the conventional hypothesis that the punishment of the criminal both reforms him and deters others from crimes in the future. We have seen the weakness of this contention in the chapter on the "Efficacy and ethics of punishments". This hypothesis was also responsible for commissions appointed to make suggestions for reduction of crime confining their recommendations to measures designed to increase severity, certainty, and speed of punishment. The positive school served to emphasize the idea of prevention which is logically the best policy to use in dealing with crime.

Enrico Ferri in his "Criminal Sociology" paid considerable attention to prevention of crime. He called the methods of indirect defence as penal substitutes. The idea according to him amounts to this. The Legislator recognizes the psychological and sociological laws whereby he will be able to obtain mastery over the factors of crime, and especially over the social factors, and thus secures an indirect but more certain influence over the development of crime. That is to say, in all legislative, political, economic, administrative, and penal arrangements, from the greatest institutions to the smallest details, the social organism will be so adjusted that human activity, instead of being continually and unprofitably menaced with repression, will be insensibly directed into non-criminal channels, leaving free scope for energy and the satisfaction of individual needs, under conditions least exposed to violent disturbance or occasions of law-breaking. Ferri formulates the idea at great details. The aim of penal substitutes is not to render all crimes and offences impossible but only to reduce them to the least possible number in any particular physical and social environment.

Dr. Mercier also treats this topic on his own lines. Criminal conduct according to him, as we have seen, is the resultant of two variable forces: temptation or opportunity; and disposition. Prevention can be achieved by attacking or modifying the causes, external and internal. If criminals were a separate class like the Jews or the Harijans, they could conceivably be exterminated or liquidated. As we have seen, criminal conduct is extremely pervasive. The idea of prevention will relate to the external factor in the matter of reducing temptation or opportunity. Shop-men who leave their wares unwatched, householders who leave valuables lying about in their houses, travellers who go about alone or unguarded with hard cash on their persons,—all conduce to more crime. Lack of provision for effective auditing and of supervision over employees generally leads to crimes of embezzlement. We learn it from Mr. Ford that he does not care to know of the antecedents of an employee because he is sure that his organization will leave no opportunity for defalcation or other crime. A veteran criminal can thus walk straight from the jail into his firm.

The police can do a great deal in this direction by propaganda work. It can bring home to the public the necessity for increased vigilance on their part, better organization for purposes of defence against attacks, voluntary patrol and surveillance work, etc., etc. It can warn the public against cheats and swindlers by notifying their modus operandi and forewarning them of gangs that may be active in other parts of the country. Crimes like riots, etc., can be prevented by timely use of the preventive sections of the Criminal Procedure Code. Patrols by the regular and the rural police, supplemented by voluntary parties, are very effective in the prevention of crime. I need not pursue this technical topic in this general treatise. Surveillance of bad characters is yet another method equally effective.

These are some of the factors that will help prevention and we may now consider the factors that will modify the inner disposition.

The first lesson in morality is the cultivation of *esprit de corps*, the regard for honour and interest of the society one belongs to. The old school was possibly labouring under the belief that virtue is something to be imposed on us from without, by the whip. Such manufactured virtue has no ethical value whatsoever as appears readily enough when the whip is removed. It is true that it is the conscience and not the fear of punishment that makes civilized life possible.

> "How small, of all that human hearts endure,
> That part that laws or kings can cause or cure !"

This is applicable to crime as to human activity in general. All communities must live finally by their ethical values. Living virtuously is an art that can be learned only by living in full responsibility for our own actions, There is need for inculcating ideals worth civilized life before the human race and for directing all human resources in shaping future citizens from the cradle. The method need not be one of mere coercion. The assistance to the near-delinquents must be supplemented by efforts to change the general situation, to reduce the social disorganization, which facilitates crime because of the lack of a consistent and harmonious standard.

The first stage in this line will be to extend biological and eugenic researches so that it may be insured that future generations shall be, as far as possible, well-born. The sterilization of the defectives has been adopted in some countries and has stopped, to a certain extent, the in-coming of maniacs, phobiacs, the diseased, and the insane. These classes do form a small part of the criminal population. Sterilization of criminals had not been undertaken for obvious reasons. The pervasive nature of criminality will render any such attempt futile.

The next requirement is to make for adequate education. Any educational system which is to render effective service in preventing criminality must provide : 1. Intelligent instruction in the ideals of civilized citizenship ; 2. An inculcation of the necessity for obedience to law in any orderly society ; 3. Sufficient vocational education to provide every able-bodied citizen with a means of making livelihood ; and 4. Efficient methods of training backward children who might otherwise become easy victims of idleness and criminal suggestion.

Poverty is the chief cause of crime and the problem of poverty has got to be tackled effectively. Normal and law-abiding social behaviour being essentially a matter of adequate adjustment to the social environment, every step should be taken to reduce these difficulties of individual and cultural adjustment.

I shall conclude this book with a brilliant utterance of the eminent criminologist, Enrico Ferri. He observed :

> In conclusion, the legislator should be convinced by the teaching of scientific observation that social reforms are much more serviceable than the penal code in preventing an inundation of crime The legislator, on whom it devolves to preserve the health of the social organism, ought to imitate the physician, who preserves the health of the individual by the aid of experimental science, resorts as little as possible, and only in extreme case, to the more forcible methods of surgery, has a limited confidence in the problematic efficiency of medicines, and relies rather on the trustworthy processes of social hygienic science Only then will he be able to avoid the dangerous fallacy, ever popular and full of life, which Signor Vacca, keeper of the Seals, expressed in these words "The less we have recourse to preventive measures, the more severe ought our repression be" Which is like saying that when a convalescent has no soup to pick up his strength, we ought to administer a drastic drug.

APPENDICES

APPENDIX A

Criminal Classes and Common Swindlers of India

(To be read with the main chapter on the subject in Part I of the book.)

The outstanding feature of crime by these classes is obviously that crime against property alone is committed. Offences against the person are not attempted except in the course of other criminal operation. This only stresses the fact that their criminality is of a professional nature. Lucre is the main objective and as such we may, for all practical purposes, limit forms of their crime to the following :—

(i) Dacoity.
(ii) Robbery (House and Highway robbery.)
(iii) Burglary.
(iv) Theft (House-theft, Shop-lifting, Pick-pocketting.)
(v) Coining.
(vi) Cattle-poisoning.
(vii) Swindling (Various ways.)

Our order of study will be on the basis of crime committed, the alphabetical basis serving little purpose other than easy reference.

1. The only class which stands as a sort of general practitioner committing every form of crime against property that comes in its way, is the Palwar Dusadh. This class is distinct from the ordinary Dusadhs and comes from the United Provinces. The Palwar Dusadhs of Ballia were proclaimed "Criminal Tribes" in 1913. They have as many as 8 subcastes which do not intermarry but eat together. They claim to be orthodox Hindus, their chief deity being *Rahu*, the one reputed to be responsible for eclipses. Polygamy and widow remarriage are permitted and intoxicating liquors are indulged in.

Malda in Bengal appears to be the base from which these criminals operate in Dinajpur and Mymensingh. A number of them are employed in Malda as village chaukidars. They also formed a small permanent colony in Murshidabad district. Their field of operation is by no means limited but it extends to almost every district in Bengal, Assam and the State of Cooch Behar. They work both singly and in gangs and commit dacoity, burglary, pickpocketting, etc., and in fact almost every form of crime against property. They assume false names freely to conceal their identity.

Apart from these, the criminal classes usually specialize in one or more forms of crime and ordinarily have peculiar *modus operandi*. For the information of the public as well as of those who have to deal with them, I present the salient features in brief here.

Those who are commonly addicted to the commission of dacoities are :

2. **Bagdis**—Of Midnapur, Bankura, Burdwan, Birbhum, Hooghly and Murshidabad districts of Bengal. They are also burglars and experts in scaling walls. As skilful *lathials*, they were often employed by Zemindars. Podes and Kaoras often go with them and all the three mix freely and also with Muhammadans in committing crimes. There is little or no distinctive peculiarity in their modus operandi.

3. **Banfars**—Of Monghyr and Patna districts of Bihar. They are usually boatmen and fishermen and in Bengal they work on the rivers. Beside river dacoity, they commit theft and pilfering in cargo boats. They adopt the common method of asking for tobacco or fire as an excuse for coming up alongside a boat they intend to rob and do so removing the cargo to their own boats after using force where necessary. They also personate as police or customs officers and stop boats on the plea of searching them.

4. **Bhumijes**—Originally of Chota Nagpur but only that portion of the tribe that lives in Manbhum and

Bankura districts. Their field of operation extends to Hooghly, Burdwan and sister districts besides their home districts. In committing dacoity, they carry lathis, spears, etc., and are used to throwing stones at the commencement of the attack or to drive off villagers crowding.

5. **Bhurs**—Of the United Provinces and Bihar. They are good workmen and are to be found mostly in mill-areas. They also work as coolies, day labourers, cart drivers, palanquin-bearers and as such are found in the districts of Dacca, Mymensingh and Faridpur. Their modus operandi is variable. They also commit theft, shop-pilfering and pocketpicking. They often scale walls and let in companions and sometimes carry baskets and measuring rods to pass off as contractors.

6. **Chhoto Bhagiya Muchis**—Of Jessore, Nadia and the neighbouring districts. They are *Muchis* by profession and also musicians and drummers. They are also thieves, burglars and cattle-poisoners. They pick up plough shares from neighbouring yards to force doors and boxes open and assault inmates brutally for keys or valuables.

7. **Gains**—Of Tippera and Dacca districts living in boats on the Meghna and its tributaries. The criminal portion idle away time catching fish by the rod and line while the womenfolk hawk fancy goods in the villages or set up stalls in bazars. They commit dacoity and robbery on the rivers by approaching boats for fire or cutting them from their moorings when inmates are asleep and then attacking them when they have drifted out. In committing robberies and dacoities, they generally, use long and fast boats called *Sarangas.*

8. **Lodhas**—Of the jungle tracts of Midnapur district, and a branch of the Bhumij. They are bold dacoits and fling stones in cases of villagers approaching.

9. **Magahiya Doms**—Of the United Provinces and Bihar. The commission of crime is regarded as

an obligation of manhood. They are fond of a nomadic life and their favourite forms of crime are burglary and highway robbery. As burglars they are daring and the method of their entrance is usually the cutting of a *bagli sindh*, a small hole close to the door post through which to pass the arm round to open the catch or latch. They usually smear bodies with oil or other greasy substance before attempting burglaries so that they would be easily able to slip out of grips. They slip away cleverly, sometimes scampering off on all fours, howling in imitation of a jackal. They also remove ornaments from persons of sleeping females and if they can succeed unobtrusively in one house they go on ransacking a series of houses in the neighbourhood. They are found in almost all the districts of Bengal, mostly employed as municipal sweepers and scavengers.

10. **Pasis**—Of the eastern districts of the United Provinces, of Oudh and of certain districts of Bihar. Used to tapping of palm trees for extraction of juice, they derive the name from *Pasa*, the sling or noose that helped them in climbing trees. They are found in Bengal as labourers in the mills and as boatmen in the Bengal rivers. Although experts as burglars, they also commit dacoities. They are experts in cutting *sindhs* and generally resort to violence when molested.

11. **Sandars**—Of the East Bengal districts. They are a nomadic tribe of watermen and fall under *Bediyas*, a generic name of 'a number of gypsy-like groups, of whom it is difficult to say whether they can properly be described as castes.' The name is derived from *Sana*, the shuttle of the weaving loom, which they used to make and sell when weaving flourished. They now hawk cheap fancy goods and look for opportunities for theft, burglary or dacoity. They live in boats several of them making a flotilla. 'There is no mistaking a river dacoity committed by a gang of Sandars. Boats are almost invariably cut adrift or

attacked while in motion. It is a rule of the Sandars never to steal anything but cash and this rule is rarely, if ever, broken.' Their field of operation extends to districts of Dacca, Bakergunj, Faridpur and sister districts in Bengal. The actual dacoits spare one fourth of the booty for other members of the *bohor* (flotilla). They also commit petty thefts from boats and houses. *Sandar* women are expert in pilfering and snatching at *Melas* (fairs), often the men picking up a quarrel to afford them opportunity.

12. **Tuntia Mussalmans**—So known because the chief occupation of these people was the cultivation of *Tunt* (the mulberry). After the wane of the silk industry, they have taken to cultivation and cart-driving, shop-keeping, etc. They reside in Bankura, Hooghly, Burdwan and at Beliaghata in Calcutta, in Bengal. Dacoities are committed by them by one of them scaling the wall of a courtyard and admitting the remainder by opening the outer door. They do not as a rule use unnecessary violence. They tie inmates up with a view to preventing their escape and remove ornaments from persons of female inmates. "Macchi ghono, jal gutao" (flies are swarming—take up the net) is usually the cry for retreat. Individuals straying away from the main body often howl like jackals to signal their whereabouts. Sections of these people were restrained under the Criminal Tribes Act. Their criminality was noticeable in Hooghly, Nadia, Jessore, 24-Parganas and sister districts, in Bengal.

Of those who commit burglary, we have already mentioned the Palwar Dusadhs (1), Bhurs (5), Chhoto Bhagiya Muchis (6), Maghiya Doms (9), and Pasis (10) above. The few others that more or less specialize in this form of crime may be described in brief thus :—

13. **Bediyas**—Found mostly in the Bongong subdivision, Jessore and the Basirhat subdivision, 24-Parganas, Bengal. These are skilful in cutting *sindhs* in matwalls. They are timid and as such rarely use violence. Burglary and theft of grains are their

favourite forms of crime, their criminality being confined to places around their settlements. Slang terms, such as, *Manghee* (sindh), *Beli* (theft), *Kakaro* (police) and *chappoki* (hiding) are used by them.

14. **Chakai Dusadhs**—A division of the caste, Dusadh, mostly found in the hilly tracts of Monghyr, Hazaribagh, Santal Parganas, Bhagalpur and Birbhum, the bordering districts between Bihar and Orissa and Bengal. Chakai is in the Jamui subdivision of the Monghyr district, from which they take their name. Unlike the Palwar Dusadhs (already described) the Chakai Dusadhs do not, as a rule, invade the whole of Bengal, but they come in large numbers to the colliery districts, where they work as miners and commit crime freely, sometimes in large organizations. They do not use violence and prefer burglary and theft to dacoity. They take serious notice of omens and often abandon attempts on inauspicious ones.

15. **Chhattisgarh Chamars**—Come from Bilaspur and other places of the Chhattisgarh Division of the Central Provinces. They had already a bad reputation and were pouring into Bengal in large numbers in search of employment as labourers on buildings, roads and mills, etc. House-breaking is their chief form of crime but they also occasionally commit thefts, robberies and dacoities and are experts at cattle-lifting. They are also used to poisoning cattle to obtain hide. They generally carry with them cloaks of threaded straw in which they hide themselves in the event of an alarm, and in waiting for opportunities to steal cattle.

16. **Dharis**—A low caste of Hindus worshipping Hindu gods as well as phenomena of nature, such as the sun, the moon, etc., and found principally in Purnea, Bhagalpur, Monghyr and neighbouring districts of Bihar. They are said to pay reverence to the *sindh-kathi*, the instrument with which they dig holes in walls, believing that it was given them by god Biswakarma to earn their livelihood ! They are of good

physique and can travel far without fatigue. Burglary is their favourite form of crime. They consult Brahmins to fix up auspicious dates for their criminal operations.

17. **Dhekarus**—A low class of Hindu Kamars, found in Birbhum in Bengal and the Santal Parganas on the border. They are dark in complexion, have small sharp eyes, generally shave clean and have both nostrils bored. They wear two strings of small wooden beads tight round their necks and some of them adorn front teeth with gold and silver. The women generally have four flower pattern tattoo marks on the back of each hand and marks also on their faces and arms. By caste-profession they are blacksmiths but they often earn living by snake-charming and selling labour. The men are by repute professional burglars and thieves, and the women expert pickpockets and pilferers. Their field of activity is chiefly the districts of Birbhum, Burdwan and Hooghly, in Bengal, and they generally work in gangs. Before starting on their expeditions, they worship Kali and drink intoxicating liquor. They frequent places of congregation such as occasions of *Ganga Snan* and other festivities and commit crime as opportunity arises. They force open locks and bolts, enter two or more houses in the same night, rarely use violence, often enter kitchens to feast on eatables available and sometimes defecate in or near a house they have invaded. The women practise picking pockets and removing ornaments from persons in fairs and markets. Stolen properties are mostly kept buried underground or immersed in water and later disposed of to receivers.

18. **Karwal Nuts**—A hunting and criminal tribe. An account given by some traces their ancestors to Bhojpur in the Arrah district, and subdivision into 5 subcastes each of which is endogamous. They commit almost every kind of crime along their line of march. A number have been settled in Saidpur, Bengal u/s 12 of the Criminal Tribes Act and under the

management of the "Salvation Army". They frequently change their names and the more clever ones have several *aliases*. They indulge in indecent and violently offensive utterings and their manner is truculent. Theft of utensils and goat is their most favourite form of crime. Their women are as active as their men. They pilfer from houses by distracting the attention of the inmates by music, etc., and conceal the stolen property in long skirts worn by then.

Although all these so far described also commit theft, this being included in the term dacoity, robbery and burglary, there are certain others who specialize in this form of theft or that. We can only present microscopic accounts of such tribes, fuller details being easily available in Daly's book and other treatises exclusively dealing with criminal classes.

19. **Barwars**—Of the United Provinces, but wandering all over India. They have a language of signs, various disguises, and commit thefts at Railway stations, Steamer ghats, bathing places and fairs, running trains, etc. Boys travel with the gangs and steal. Have been declared under the Act as "Criminal Tribes".

20. **Bhamptas**—Natives of the Bombay Presidency, they dress like Marhatta traders and are expert railway thieves and pickpockets. They commit thefts at fairs, places of pilgrimage, etc., like the Barwars (19), one of their tricks being to lie down on the floor of train compartments pretending to make room for other passengers but really to steal from bags, etc., kept under the seat.

21. **Chain Chamars**—Of Gazipur and Jaunpur districts in the United Provinces ; take to petty thievings; make use of boys to assist in thefts ; women are expert swindlers and pickpockets.

22. **Chain Mallahs**—Also of the United Provinces and resemble Chain Chamars (21) ; pickpockets, arrest of one member at any place indicates presence of others in the neighbourhood ; frequent markets and crowded places ; are most frequently to be found in Bengal between September and March.

23. **Kepmaris or Inakoravars**—Come mainly from Trichinopoly in Madras; boys are expert thieves; as also women; live and dress well and are literate; specialize in railway thefts.

24. **Mallahs**—commit thefts on river.

25. **Minkas**—commit thefts, shoplifting and pick-pocketing.

26. **Sanaurhiyas**—commit running train thefts.

Cattle poisoning is resorted to by Chhoto Bhagiya Muchis as we have already seen.

We shall now take up swindlers who should include coiners and counterfeiters. Methods of swindling should be published broadcast for information of the public who are mostly unwary and credulous. 'Notes of warning to the public' on this account have been published in the form of a pamphlet by Daly. (His 'Common Siwndlers And Thieves' Tricks.') There is more need for public enlightenment and not a little can be done by newspapers republishing informations every now and then. In this treatise also, I must incorporate such informations as may serve to put the public on its guard. The public should naturally want to know more of the methods than of the particular criminals and as such I shall speak less of the classes themselves.

27. **Baid Mussalmans**—A swindling fraternity coming from Rajputana States. They travel in small parties disguised as Hindu *Sadhus* (saints) and claiming miraculous powers of turning base metal into gold. They swindle people all over India.

28. **Bogus Mecca Mowallems**—Of the Dacca district of Bengal. These induce people to accompany them to Mecca on pilgrimage and then rob by drugging or murdering them on the way.

29. **Byadhs**—Come from the districts of Jessore, Nadia and 24-Paraganas of Bengal. They swindle people

(*a*) by persuading their victims that they are in possession of a quantity of gold *mohurs*, which they have found while dismantling an old building and that they will pawn the lot for a sum of money down and when successful, disappearing promptly ;

(*b*) by promising to give in exchange for ornaments *Lakshmi's Bhar*, supposed to be an inexhaustible jar of money and arranging to deliver the same at a lonely place, the jar having a few coins on top but mostly been filled with earth and the circumstances precluding close scrutiny ;

(*c*) and by the doubling trick which is well-known. The tricks are by no means exclusive to these people and are often practised by ingenious individuals or parties.

30. **Jadua Brahmins**—Jadua means 'magician' and these Brahmins are found chiefly in Patna and the district of Muzaffarpur. The doubling trick just mentioned was their speciality but is now practised by many. They, however, vary methods. One is by one member pretending to be a holy person and others pretending to look out for him as he had turned their silver ornaments into gold. Cupidity of unwary villagers is stirred and the Brahmin sits over collected ornaments citing incantations and otherwise treating them only to clear away with them as soon as he finds an opportunity.

Another of their methods is swindling by the usual doubling trick. They also pretend to have the power of becoming invisible and of showing the goddess Lakshmi (goddess of fortune) to the dupe. They sometimes pose as *pandas* (workers) of Jagannath. Pretending to be able to discover hidden treasure in the house is also one of their tricks. In other words, they are versatile (!) swindlers.

31. **Muzaffarpur Sonars**—Are, as the name indicates, goldsmiths of Muzaffarpur who migrated to the Nepal frontier. The Rajshahi Division of North Bengal is their chief field of operation. They swindle by

(*a*) the *Bala* trick. A Sonar will wait at a Railway station and pick out a suitable person. He will be friendly and give out that he will go to the same destination. He will persuade his victim to walk some distance and on way arrange to be met with by a man asking for pecuniary help and offering a gold or silver *bala* (bangle). The cheat enters into a discussion of the purity or otherwise of the metal when a third man posing as a goldsmith joins and offers to test it. Either of the two cheats shows an anxiety to buy it off ; but giving out as having no money on hand obtains some from the victim on the security of the thing. This is followed by quiet dispersal, the victim feeling temporarily happy but later sorry. Needless to say variations are adopted but with the same view and other swindlers also adopt similar tricks

(*b*) also the *Tapka* trick. A gilded ornament or piece of metal is dropped on the road by a confederate and picked up by the swindler who attracts at the same time notice of an unwary person. The victim demands that he must be shown this. The scene then shifts to a secluded place where the cheat hotly contests why his good fortune should be shared and finally and reluctantly disposes of his share to the person ! The victim thanks his stars and plans up a comfortable future till he is disillusioned.

Apropos this topic of common swindles, I prefer here touching upon other forms of swindling although agents in those cases may not have been distinct enough to be denominated by specific class-names. In these cases it is the methods that should be remembered by members of the public rather than any particular people who may practise them. As a matter of fact, more and more ingenious methods to dupe the ignorant public will be found and it is only fortunate that criminals here adhere to the old, and unfortunate. that these should not have lost their potency yet.

32. **Poisoners**—Every traveller would do well to exercise caution in accepting food offered by insinuating strangers whose acquaintance he may have picked up on the way. Betel leaves and tobacco are the commonest media through which attempts to poison may be made. The poisoners we are speaking of drug

only to rob and they prefer *dhutura* seed to any other. When the victim gradually slips into insensibility, the friend dips the hand into his pocket and disappears. These poisoners are of all ages and castes.

33. **Railway Ticket Swindlers**—The swindler will lend his assistance to illiterate people and offer to buy tickets for them. 'Not until they find themselves being ordered out of the train by the Ticket Inspector will the dupes discover that their helper has purchased their tickets for the first stopping station along the line, perhaps one-twentieth part of the way to their destination'. The Railway Authorities can best mitigate this evil by enjoining upon the station staff to assist novices in travelling in such matters.

Resale of used-up tickets is a form of cheating of which the railway company is the main victim.

34. **Bogus Ticket Collectors**—Persons with a few metal buttons on their coats enter carriages and by sleight of hand substitute short-journey tickets for correct ones and realize extra fares under threat of prosecution. They are best handed over to the railway staff as soon as they have attracted suspicion.

35. **Swindlers by doubling tricks**—Apart from those already mentioned, doubling may be promised in respect of currency notes also. A genuine note is shown as having been doubled by means of treatment with certain chemicals, this having been really achieved by sleight of hand. More notes are then collected, bundled, treated and surreptitiously removed, a bundle of paper being substituted and it being ordered that this bundle should not be opened until after three or four days. This form of cheating is fairly common although one may wonder why the dupes do not suspect that the knowing man should not manipulate to his gain quietly instead of working to the profit of others !

36. The *Dona Khel* (doubling) bank is yet another variety. Some Faquirs start a bank and pay depositors double their deposits only to attract others

to put in more and then quietly leave the expectant depositors to bewail their lots.

37. **Swindlers by the Lost Relation Trick**—The swindler collects particulars of a missing relation of a family, usually one who has been out for years and personates him. The Jogi Pathans of Etah and Budaon in the United Provinces, usually travel in parties of *faquirs* (mendicants) and let one of the party who bears the closest resemblance to the description of the missing man, personate him. When the cheat has been received in, he may proceed to swindle by the doubling or other trick and then be missed again! The well-known *Bhawal Sannyasi* case was suspected by many as one of this nature.

38. **Swindlers by personation**—These may adopt various tricks. Police officers and Excise officers are personated and money extorted from villagers on various threats. Income-tax assessors, insurance agents, school sub-inspectors, sanitary inspectors and other employment agencies are stimulated with similar ends in view. Charity collectors may also be loosely grouped in this class as they also pose as real workers and carry faked credentials.

39. **Mock Rajas and Nawabs**—These are rather educated people who dress well and give airs only to have valuable articles on hire or on approval and defer payment indefinitely.

40. **Bogus Marriage Negotiators**—Where bridegrooms are scarce or brides are seldom to be found, these people pose to find matches and work on commission. Men of the party pose as relations willing to accept the matches on suitable terms. In rural Bengal, such tricks are difficult to practise as close enquiries by parties are made. In Calcutta, such tricks often meet with facile success.

41. **Mystic Healers and Love Doctors**—They generally assume saintly airs and induce the people to believe they have powers to cure diseases, overcome barrenness in women and restore love of faithless or

estranged husbands or paramours. Some necessaries for performing a rite are demanded and gold to be placed near the spot where it is performed, Then they go the way of all cheats.

42. **Telegraphic Money-Order Swindlers**—Cheat mostly at big trade centres posing as merchants and giving out that they expect remittances from home. Bogus telegrams are then sent to the address of real merchants asking for money to be sent while actually these latter may be elsewhere.

Big people at hotels in cities are often talked with and their particulars elicited. The swindler then assumes the name and occupies rooms in another hotel and wires for money to people of the former on urgent pleas. A telegram at the other end does not bear any signature and this fact is thus exploited.

43. **Chhaperbands and swindlers by counterfeit rupees**—Chhapperbands are Deccanese Muhammadans who frequently visit Bengal. They are coiners. They offer 17 annas in coppers for a rupee saying that they have more of copper coins than they can carry. They then count the coins up and hand them over getting the rupee in exchange. They then pretend to inspect this rupee coin carefully and hand it back saying it is base, thereby substituting a base one from their purse. Counterfeit coins are, however, in common circulation all over and local criminals have known the easy manufacture by means of earthen moulds or casts. We shall study this form of crime in more detail later.

44. Marwari Bauriyas who are also coiners swindle people by making purchases and offering an unusual rupee. On being told that this is not current, they ask what kind is and when a rupee is handed over for inspection, they substitute a counterfeit one for it by sleight of hand.

I have surveyed the more important criminal tribes coming from all over India and operating in Bengal. This survey is meant primarily to warn the Indian public and apprise non-Indian readers of the problem of these outcasts.

I could have multiplied instances from other parts of India and of those who stick to their own provinces. I refrain from doing so as their nature will have been clear from those studied here. I have given extensive references in the main chapter in Part I of the book for those who want to look them up.

APPENDIX B

Survey of specific forms of crime—Indian crime with reference to conditions abroad—Comparative and critical appreciation of the law relating to crime

This survey must necessarily be a rapid one I have no space to spare for a detailed study nor do I need go over the vast field covered by eminent jurists like Sir Hari Singh Gour Indian conditions are like and unlike conditions abroad just inasmuch as one country resembles another and at the same time and in some respects differs from it India however, has problems of her own as we have seen and shall see and both the Indian reader and the reader abroad are most likely to be interested in them The need for this survey arises from yet another point, viz that the Indian Penal Code the history of the compilation of which we shall read ahead has provided a unifying criminal law which alike in its scope and the nature of its rational provisions has been a thing of pride to the administration It was devised and adapted from existing codes of India and of countries abroad as far as they were then available Constructions it put to various specific crimes may therefore interest criminologists and law-makers outside India We shall take the divisions of the Penal Code for guides and pass over many forms of crime of which neither the prevalence nor the construction call for any special mention

Our method in this survey will be to present a historical retrospect of the particular type of crime, an account of conditions abroad in respect of it, the prevalence or otherwise of it in India, the law relating to it and any further comments that may be called for Part of this but on a very elaborate basis has been done by Sir Hari Singh Gour in his *Penal Law of India* Sitaram

Bandyopadhya, Subrahmania Pillai, Bejoy Sankar Haikerwal are some of the writers who have touched more or less briefly upon the nature of Indian crime. H. L. Adam, S. M. Edwardes, Cecil Walsh and others have described the nature of Indian crime by reference to stories, anecdotes and actual cases in Courts more for popular delectation than with a view to appraise the nature or the volume critically. Sleeman, Kennedy, Daly and Cox, again, have dwelt on special aspects of crime and criminals in India and have done their parts well. I shall be referring to all of them as well as to a host of foreign criminologists for materials for this survey.

Offences Against The State

The first specific form of crime to be mentioned has been, naturally enough, 'offences against the state'. All states have the same right of self-preservation as their subjects and they have from time immemorial taken precautions to ensure their preservation. The laws against treason have thus been inevitable in any political state. If the state, whether it be a horde, a clan, or a tribe, is at war with another group, and one of its members aids and abets the enemy, his action is a veritable source of weakness and danger and he is punished for this crime. The nature of treasonable acts has varied according to the organization of the group and the prevailing notions of the time. As we have seen, Oppenheimer arranged the catalogue of the earliest crimes by placing treason at the top.

When people believed in the divine right of kings, monarchical government legislated jealously against offences affecting the power, dignity and majesty of the monarch. With the growth of popular control and the curtailment of the powers of monarchies, the states, as entities, came to take the place of monarchs.

The term 'treason' has been derived from the French *traison* and it imports a betraying, treachery, or breach of faith. In this wide sense, it denoted offences against the king and government as well as those by inferiors, such as a wife to kill her husband, a servant his lord or master. The distinction as between high and petit treasons thus came to be recognized.

To trace the psychological root of political crime, one has to take into account the bond that binds the citizens to a state. The psychological basis of political organization may have been more or less conscious or unconscious adaptation on the part of primitive men. The dawn of conscious political theory, however, was to be seen among the Greeks of the classical period. Plato's psychology was his politics. According to him, there are three parts in the human soul : that which knows (the philosophic); that which is full of zeal and bravery (the spirited) ; and that which merely seeks bodily satisfaction (the appetitive). In a Republic, the king stands for the necessary domination of knowledge over both spirit and desire in the body politic. His guardians must rule, with a brave and zealous soldiery under them, and a merely appetitive populace kept well in subjection to do the productive work of the community. Aristotle in his turn, while advocating a fairly wide distribution of political power, favoured a mixed constitution embodying both democratic and aristocratic elements but denied claims of slaves or those who do manual work. Plato and Aristotle held sway down the ages.

While on the one hand, society, ever since it has been organized, has been managed or governed in one way or another, on the other, men have been trying to answer the eternal question : How can society be best organized and administered ? Hobbs, Locke and Rousseau greatly influenced political thought and it was the last-named, above all, who first made positive democracy a live doctrine in the world of politics. Bentham, Hegel, Marx and others have said their say, the idea of dictatorship has forced itself to the forefront and still human mind is as uneasy and questing as ever.

Political crime is thus incidental to progress and advancement of communities. It signifies an act committed with an aim, right or wrong, to benefit society or deliver a subjugated or oppressed people from the machinery binding them for the time being. It presupposes an attitude of mind which, dissatisfied with the existing conditions, is fired by the ambition to realize an ideal that is inconsistent with the practical politics of the day.

The urging factor is an emotional reaction which, by its very nature, is apt to cloud visions so as to minimize the good, and magnify the evil of the system attacked. Violent and non-violent revolutions have the same end in view. The actual volume of political crime, however, depends on the temperament and the sagacity of the disaffected.

The impact of foreign ideas accounts for a good deal. But for it, some peoples would move in their timeworn groove. It is becoming increasingly difficult for one people to shut out political enlightenment from others except through dictatorial censorship.

So far as racial influence goes, active and enterprising races are quicker at political crime than those who are passive and sluggish. This, of course, other things being equal.

Religion is a powerful tool in the hands of agitators. Alleged disrespect to a particular religion has inflamed votaries in many cases. Fanaticism is a special mark of religious uprisings.

Economic causes are also very cogent. Influence of socialism is felt over countries which have the problems it is alleged or believed to solve.

The English Law of high treason comprises acts such as compassing or intending sovereign's death, levying war against him, adhering to his enemies, killing his wife or heir, violating his wife or eldest unmarried daughter or heir's wife, killing chancellor or treasurer or judges, etc. Many of the provisions are undoubtedly unnecessary and only constitute relics of the past. There may be some justification for the king's eldest son or daughter being specifically included but a treasurer or judge should hardly be differentiated from other responsible public functionaries.

The laws against treason in the United States are fairly liberal. Those in Soviet Russia are extremely severe. It is only to be expected that dictators will jealously guard their own regimes and be intolerant towards opposition. In times of war, however, the laws against treason and sedition acquire a special importance everywhere because a country is in a position of extreme danger from its external foes.

In self-governing and sovereign states, these laws are comparatively rarely used, especially in times of peace. Where the opposition is tolerated and healthy criticism of state policies entertained, people rarely take to sedition. The best example in this respect is afforded by the British people who have now accommodated themselves to a respect for the constitution, which is rarely to be met elsewhere. Their conditions in this respect are nearly ideal.

At the time the Indian Penal Code was under draft, the position was that no native of India was subject to the English law of high treason. As the Law Commissioners held, this anomalous state of the things was, in some degree, due to the singular manner in which the British Empire grew up in India. They proceeded therefore to provide against four principal offences, viz, (1) waging war against the Queen, (2) waging war against an Asiatic ally, (3) overawing the Government and (4) permitting or aiding the escape of a state prisoner or a prisoner of war. New sections making minor additions have since been enacted also.

The section which the Administration is probably most called upon to use has been 124 A which provides against sedition. This section was variously drafted and variously revised, eminent authorities taking exception to this clause or that. It now provides that 'whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India' is liable to punishment which extends to transportation for life. The various words in the section have partially been explained in the explanatory notes to the section itself but their implications are yet immense. The reader is referred to such authorities as Sir Hari Singh Gour.

As is to be expected, the handling of this section has always proved a delicate problem. On the one hand, the Press should be ensured liberty, on the other, it has to be seen that the Press or any other agency does not endanger government itself by holding it up to the hatred or contempt of the readers, as, for example, by attributing to it every sort of evil and misfortune suffered by the people or imputing to it base motives.

The political unrest in India dating from the beginning of the 20th. century has caused untold suffering and anxiety. Ordinary laws have been broken and terrorism has cost lives of many of the officers. This despite the non-violent attitude Mahatma Gandhi has been consistently preaching. The cult of terrorism specially captivated young impressionable youths and designing brains did not spare even young girls from being led to take it up. The situation has been worst in Bengal and especially in the period after 1930. The Administration had to take elaborate precautions and a sort of preventive detention coupled with other vigorous measures brought the situation under control. With the inauguration of provincial autonomy in April/37, repeated attempts have been made by a large section of the people to secure release of the political prisoners and to secure other relaxations. Responsible leaders have been avowing the alleged change in the outlook of the political prisoners and detenus in favour of non-violence and the Administration has in many cases accepted their assurance. We may hope for a better future.

The chapter in the Indian Penal Code relating to offences against the state comprise ten sections dealing with the principal classes of offences I have already mentioned. Practically all the old sections have been rarely, if ever, used. The sections used more often were 121A and 124A, both later additions. The former deals with conspiracies to commit offences punishable by Section 121 (Waging war, etc) and the latter with sedition. I have spoken of the latter at some length already.

The punishment for sedition varies from transportation for life to a mere fine. The maximum punishment has been adjudged as too severe. The object of the state in instituting prosecutions of this kind should not be vindictive and severe punishment would defeat the very purpose by alienating the public and provoking a greater hostility. This particular point among others was stressed by Justice Sir Sulaiman in disposing of the appeal in the well-known Meerut Conspiracy Case.

Offences Relating to the Army, Navy and Air Force

The next chapter in the Indian Penal Code relates to offences relating to the Army, Navy and Air Force. It has been attempted to provide, in a manner more consistent with the general character of the Code, for the punishment of persons who, not being military, abet military crimes. It is obvious that an outsider who exhorts or assists those who are subject to military law to commit gross breaches of discipline, is a proper subject of punishment.

This is a matter of importance everywhere. The importance arises from the severe nature of the military penal laws justifiable on account of the peculiar nature of the duties of the soldiers and of the peculiar relation in which they stand to the government. Thus, as the Framers observed, 'he who should induce a soldier to disobey any order of a commanding officer would be liable to be punished more severely than a dacoit, a professional thug, an incendiary, a ravisher, or a kidnapper'.

This chapter provides against abetting mutiny, or attempting to seduce a soldier or sailor or airman from his duty, abetment of assault, of desertion by either, harbouring of a deserter, abetment of insubordination and wearing garb or carrying token used by soldiers.

Not many offences of the nature are committed and no special comments are necessary.

Offences Against The Public Tranquillity

The next chapter relates to offences against the Public Tranquillity. It deals with a class of offences intermediate between offences against the State, and those against the person. The most elementary form of this class of offences is an affray which is committed 'when two or more persons, by fighting in a public place, disturb the public peace'. The public disturbance is the important ingredient, for, if the fighting be in private. it is no affray, but, an assault The gist of the offence thus consists in the terror it causes to the public. The punishment provided is imprisonment of either description for a term which may extend to one month, or fine which may extend to one hundred rupees or both.

The next aggravated form is an unlawful assembly when there is a meeting of great numbers of people with such circumstances of terror as cannot but endanger the public peace. The number of persons was fixed at five, three being considered too low and twelve too high. But it is clear that the mere meeting of men cannot be regarded as illegal and the mere probability that they *may* create actual disturbance is no safe ground on which to make the assembly unlawful. The persons must have a *common* object which may be :

First.— To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant ; or

Second.— To resist the execution of any law, or of any lega process ; or

Third.— To commit any mischief or criminal trespass, or other offence ; or

Fourth.— By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right ; or

Fifth.— By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

The section would thus seem very wide. An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. On the other hand, if the object does not fall under any of the clauses, the assembly is not unlawful as when five persons assemble for the purpose of gambling, because though sometimes illegal, it is not one of the illegal objects enumerated in the section.

Being member of an unlawful assembly is punishable. 'Joining unlawful assembly armed with deadly weapon' is the next aggravated form, 'joining or continuing in unlawful assembly knowing it has been commanded to disperse' is another.

The offence of 'rioting' comes next, it being a particular state of activity of an unlawful assembly, i.e., when force or violence is used by it or by any member in prosecution of the common object. An 'affray' differs from a 'riot' in that it is unpremeditated and sudden and does not require five or more persons and that it is committed in a public place. Rioting has been made punishable and the aggaravated forms, viz., "rioting, armed with deadly weapon", etc., and other incidental offences such as hiring persons, or harbouring them for an unlawful assembly have also been provided against.

It has been very aptly enjoined upon the owner or occupier of land to give the earliest notice to the police in the event of an unlawful assembly having taken place already or being about to do so and to use all lawful means in his power to prevent it or disperse or suppress it. Non-compliance has been made punishable. This proceeds upon a presumption that the owner or occupier of land allowing an unlawful assembly on his land could not but be cognizant of the object, and that he could, if he so minded, prevent it. This obviously presupposes a premeditated riot and not a lawful gathering suddenly becoming unlawful or riotious.

It is usual for the police to issue 'warning notices' on the landholder in the event of a likelihood of a disturbance on the land being known in advance so that the landholder can be made responsible for indifference or connivance. The great practical utility of such notices is that disturbances seldom occur after the notices are served. The notices have a so-called moral effect which is eminently worth the trouble.

The Criminal Procedure Code has laid down ways and means by which such unlawful assemblies and riots can be prevented, e.g., by binding down parties concerned to keep the peace by passing an injunction u/s 144 Cr. P.C, etc. In the case of one already in progress, it could be dispersed by a police officer or magistrate. The use of firearms has also been enjoined or permitted in serious cases and that for avoiding a greater evil.

The wide principle underlying these provisions is that Law should discourage the tumultuous assemblage of men. In the early times, such assemblage of men was regarded as a menace and so it is to-day. With the growth of democratic power, however, the assemblage of men for various purposes has become a necessity and the right to assemble has been asserted. The illegality has thus been transferred from the assembly to the *object* of the assembly.

Offences of this nature should be common all over the world, the mob being what it is and easily excitable. A great deal depends upon racial temperament and individual mental equilibrium. There may be parties arguing for hours over mutual differences which may even be irreconcilable without anybody taking his hands out of the pocket while there may be others who will muster out to fight soon after they have spoken a few words. Tens of thousands of persons assemble at Hyde Park to disperse peacefully after proposing the most radical reform or modification to a measure while a few hundred on the streets in Germany often required a look-out police squad.

In some cases, calculating people try to terrorize unsuspecting persons in order to take possession of lands or else to which they consider themselves entitled by right or might.

The real danger of this class of offences, however, lies in the contagious nature of the mob-psychology. Emotional excitement clouds vision and suggestion acts like a detonator. Many a political meeting, peacefully started, ends riotiously. speakers arousing and inflaming the emotion of anger in the mob.

The mob-psychology in its most atrocious form is met with in America in what is known as the white-man's brutal crime, lynching. The crimes show the strange barbarism of people who are otherwise civilized, and who, when one meets them on ordinary occasions, make a distinctly pleasant impression on one. Mr. Veronica King cites two typical cases.

A young white woman, named Mrs. Hayes, was alleged to have been attacked in the usual way one Thursday night. The next afternoon a telegraph operator caught an African in the public square when the whole town was excited and probably more or less engaged on a man-hunt—said to be the most exhilarating of all forms of sport. He dragged his captive to the house of the complainant and the girl screamed that this was the man. What the man said is not on record. The father of the girl drew out a pistol and began firing. Seven bullets dropped the African dead. A crowd of persons presently gathered, seized the corpse, tied it to a truck and dragged it through the streets, and then burnt it to ashes on the public square ! "The man may have been guilty of the assault," says Mr. King "and again he may have been innocent. But in any case he was murdered out of hand at the scream of a probably hysterical woman, who might not have been right in her identification of him as her assailant. That his miserable bullet-riddled corpse was dragged through the streets and then burnt seemed to be a fact, not about him, but about the crowd to whom such a futile and disgusting exhibition was a satisfaction".

The other related to a murder of a school-girl whose corpse was found in a state that almost justified the fury of the mob. Her murderers were soon caught, one being a black named Curry. He was quite cool and collected and confessed giving details of how the shocking murder was committed. The poor, tortured remains of the young girl made a mute but overwhelming appeal. As soon as the three negroes were caught, the mob started preparations to burn them alive. Five hundred participated in this sentence, that each negro should be burnt to death separately. Groups of negroes stood about and watched the death of the accused persons. A brother of one of these murderers was there looking on and he was worked to denouncing the mob in a frenzy. Next night some men went to his house, took him out and hanged him, for no crime except being moved by his brother's fiery death, soaked him with oil and tied him to a stake, to be consumed by inches!

These do illustrate the mob-psychology in general but more so the malignity of the powerful. In the reverse circumstances, the Negro mob, howsoever moved, would only protest, perhaps clamour, but would have to remain content with supplications to the State for justice.

Riotings in India are very common. Mobs are inflammable. I have given figures of riots in Appendix C.

All that can be said with regard to this type of crime, is that the law in India is adequate. Had it not been so, rioting would be a greater menace than it is.

I may, however, in passing offer some criticism of this chapter.

The words "Legislative or Executive Government of India, or the Government of any Presidency or any Lieutenant-Governor" in Clause I of the definition seem to savour of specifying without point. Possibly, amendments have already been made after the New Reforms to alter the designations. If not, this should be done or the wording retrenched.

It has been sought to justify these words by stressing that this clause confers an absolute protection on the Government and Governors, the protection conferred on its public servants being only qualified and circumscribed by the legality of their action. This is too technical a plea. If Governors are to be protected absolutely there are others who should, such as judges. Government is too wide a concept and in its corporate capacity can have no private concern.

As I have said, the sections in the chapter have been arranged hap-hazard. The arrangement is unmethodical and unscientific.

Sections have, again, been unnecessarily multiplied. The one besetting sin of the Indian Penal Code to which I shall refer again and again in this review is that it errs on the side of over-elaborateness. Many sections have been added only by imagining the original offence to be attended with some aggravating circumstances. Sections 158 and 157 are seldom used, 153 is difficult to bring home and is almost a dead letter. 152 is meaningless, there being other sections, such as 332 and 353 which could be made easily to cover its ground. Section 153A, which has been later added and which provides against promoting of enmity between classes is a salutary provision. 148 could be washed away enhancing the punishment in 147 by one year. After all 'being armed with a deadly weapon' is only an aggravating circumstance and circumstances like this are many. 145 and 151 could also be amalgamated. 144 could be merged in 143 by raising the punishment slightly. The same relationship obtains between these two as between 148 and 147 and the same criticisms apply.

When I say that one section could be merged in another, I do not mean that the two are already coincident in scope. I mean that the technical points made out for making them two sections instead of one are not so very convincing. What is the point in making a separate offence by simply counting one aggravating feature while there may be many such features and providing a six-month or one-year more while the maximum sentence passable is in each case sufficiently high to admit of judges varying their sentence according to the circumstances of each case ? I shall stress this feature again and again and hence this warning so, that I may not be misunderstood.

I am confident any future law commission would be able to adapt this chapter better and reduce its size considerably.

Offences By Or Relating To Public Servants

The next chapter deals with 'offences by or relating to public servants', these offences being such as can be committed by public servants alone. Offences common between them and other members of the community are left to the general provisions of the code. They can thus be prosecuted for cheating, committing fraud, etc., just as ordinary men are prosecuted. These cases will be viewed as having been committed by them in their private capacity as ordinary citizens. There is, however, some protection afforded to them for acts committed in good faith and in the discharge of their official duties. We have discussed these exceptions under head 'criminal responsibility.'

The chapter does not provide punishment for all kinds of misconduct of public servants, a great many of them being specifically provided against in the terms of the appointment, or generally in the government servants' conduct rules. The government is, again, free to impose other penalties such as degradation, dismissal, etc., in addition to penalties imposed under this chapter.

The main offence stressed is corruption or bribery and it has been described as the taking by a public servant of 'gratification other than legal remuneration in respect of an official act.'

Bribery has always been an extremely prevalent form of crime. No epoch has been free from it ; no country either. It embraces public officials and private persons.

In crude early age, the payment of the Judge by the parties was a matter of course. Its abuse was a sale of justice to the highest bidder. Thus, payment led to corruption and the social reaction was that the judge should be paid by the state and he should decide in accordance with the light of his conscience and not with the magnitude of his reward.

Coming nearer to our own times, we find that corruption reached such a pitch during the reign of Edward III, that, in 1350, Sir William de Thorpe, the Chief Justice of England, was himself charged with malpractices. He confessed and was sentenced to imprisonment and to forfeiture of property. He was later restored to office.

As might be expected, the evil continued still, and a special commission was appointed to inquire into the whole subject. Out of the evil that was brought to light, came a certain amount of good. The salaries of the judges were considerably increased and they were enjoined to administer the law equally to all and abandon the practice of accepting 'presents' from suitors.

In 1621, as many as twenty-eight specific charges were brought against Francis Bacon, the Lord Chancellor. In an appeal for mercy, he 'plainly and ingenuously' confessed. He was removed from office, fined £40,000 and imprisoned in the Tower.

The judge's is the highest office of trust and hence his peculiar privileges and liabilities. The judge is anxious to preserve himself from the blemish of being considered partial on any account. The worst we hear of was in China where obtaining justice was purposely made expensive so that litigation might decrease ! This is a view to which very few can subscribe.

Referring to America, Sutherland states :

> In many cities and states an immense amount of bribery occurs in connection with the purchase of supplies, the making of contracts, the enforcement of regulations, and the enactment of legislation It is involved when coal is purchased, when school books are purchased, when roads or buildings are constructed, when land is purchased for public purposes, when franchises are granted to railroads, bus companies, steamship companies, and other public utility companies, and on hurdreds of other occasions Agents of book publishing companies have testified regarding their methods of bribing school boards, and many public investigations have shown the wide prevalence of bribery of public officials.

He goes on enumerating many other instances.

Conditions in India have been similar Corruption has been as prevalent as from the undetectable nature of the offence it could be expected. It has pervaded the run of the common people and we know of the difficulty in getting honest hands for any sort of business. Business failures in India point more towards dishonest hands than blunders of organization or mishaps. In the Jute Offices, Railways, Steamer concerns etc , etc , there is a howling mob of underlings ever eager to snatch opportunties of making their 'two pice.' There is a very great amount of dishonesty diffused throughout the populace at large.

It is difficult for the state to lay down rules for improving the general tone of the public The uplift of the general moral tone would depend on many social factors improving.

It is, however, within the competence of the state to ensure the better conduct of its own servants. The integrity of the Public Service is a postulate of good government. The police in India have unfortunately borne the stigma, at least in the rough estimation of the public, almost alone While it cannot be denied that there is some amount of corruption in the lower ranks, this should be considered subject to various limitations.

In the first place, they are in constant danger of being tempted by bribes and other inducements to refrain from doing their duty which is, in the main, unpleasant. As we have seen, human nature has a breaking point, however high, and it is little wonder that some succumb to temptation.

In the second place, they are usually low-paid and have their bare wants often unsatisfied.

In the third place, there are a host of village functionaries, recognized and unrecognized, who set out collecting bribes in the name of the police and see to their own aggrandizement. The police, however, get the bad name.

In the fourth place, public impression is far from reliable because it is based on isolated instances rumoured about in highly exaggerated colours.

In the fifth place, better and better types of officers and men are joining this department. The evil is thus fast diminishing

In the sixth place, there is far closer supervision in this department and the merest attempt being proved in any case results in departmental action of the severest nature. If other departments exert themselves in the same way against dishonest clerks, *peshkars*, *nazirs*, etc., etc., a great amount of good will accrue. The cases of these classes of officers are even more regrettable, at least in one sense, viz. that far closer supervision on them is actually possible because many of them work under the very eyes of presiding officers. The police are mostly scattered and there is little chance of their misdeeds coming to notice unless they are ventilated at proper quarters by the public.

The difficulty in eradicating the evil lies also in the fact that the officers guilty of malpractices hold authority and it is by no means easy to bring a charge home to them. In the case of the police, for example, people are in a state of fear. The police have wide powers and if they are not scrupulously conscientious, they can do injury in many ways.

The Law Commissioners stressed the fact that where the people are independent, the giver of a bribe is usually the tempter and the receiver is the tempted. They considered conditions in India were widely different. For here the receiver of the bribe is really the tempter, the givers "give bribe to Magistrates from exactly the same feeling which leads them to give their purses to robbers, or to pay ransom to pirates ; where men give bribes because no man can, without a bribe, obtain common justice." In this view of the matter the authors stressed the fact that receiving of a bribe mostly partakes, of the nature of extortion.

Undoubtedly there exists the need for fighting this evil and at the present moment (1938) Punjab, Sindh, the Central Provinces, the United Provinces, Bihar, Orissa, and other governments have already organized an anti-corruption drive, some having set up committees to inquire into the extent of corruption in the services and to devise ways and means to combat it.

Each committee has had a great deal to say with regard both to the extent of the evil and to the ways for combating it. One of the measures, as incorporated in one communique, is that when five reputable persons join in making a written complaint otherwise than in regard to a case in which they were personally interested, alleging corrupt conduct, etc., the departmental superior shall be bound to make full investigation into the case. This leads one to believe that complaints on specific cases made are not ordinarily inquired into. Actually, however, they are. The difficulty is that 'reputable persons' not interested will *not* bother.

Other suggestions are that Government will require the grant of integrity certificates to every official, and the keeping of a record of his property and will discourage the presentation of *dalis*, etc. The integrity certificate will entail unnecessary embarrassment, the record of property is *actually* kept, and the receiving of *dalis* *is* discouraged.

The United Provinces Committee is of the "opinion that corruption exists in all departments and also in local bodies. Among the causes enumerated are reluctance of the bribe-giver to bear evidence, the absence of public opinion, the lack of close supervision by superior officers, the demand of a high standard of proof in departmental inquiries, and the existence of a large number of low-paid public servants."

The causes enumerated are more or less true and may be taken as a practical guide for basing ways on them.

1. 'The reluctance of the bribe-giver to give evidence' is only natural inasmuch as he derives some sort of benefit which, in the ordinary course, he would not. The departmental superiors should therefore keep alert and tap other sources of information. The co-operation of the public and the raising of the general tone of honesty are necessary.

2. 'The absence of public opinion' is due to the reluctance of other people to be dragged into a matter not involving themselves. The Sindh Government has taken steps to arouse public conscience in this matter by propaganda, etc. The District Committee proposed by the U.P. Committee to be set up with the district magistrate as president, the district judge, the superintendent of police, two members of the bar, one member each of the municipality and the district board and all local members of the provincial legislature as members should be a useful machinery to exert a healthy influence.

3. 'The lack of close supervision by superior officers' may be counteracted a great deal by their changing the attitude from one of 'action when demanded' to one of 'action on information'. In other words, they should 'investigate' cases of corruption and not expect them to come up with all evidence complete. Cases should be 'detected' and not merely 'judged'.

4. 'The demand of a high standard of proof in departmental inquiries' must continue. It will be most inequitious if action, which is and will always be drastic in such cases, be taken on mere presumptive evidence.

The public servants have as much right to evenhanded justice as any private citizen. Prompt investigations, however, in suspected cases should be insisted on.

5. 'The existence of a large number of low-paid public servants' is really to be regretted. A whole-time servant should have more than the bare necessities of life from the employing agency as, otherwise, he may be under the fire of temptation, or at any rate, in dire disappointment and discontent.

We may add :

6 Honesty must have its reward Efficiency will always remain relative and one who does his best and conducts himself honestly must be encouraged with due recognition

The evil is undoubtedly a hard thing to fight. 'The belief that official position is an opportunity as well as a duty is wide-spread ; its disappearance is likely to take a long time'. A start has, however, to be made and the present attempts to combat the evil deserves public attention.

So far as the police is concerned, we may quote the observations of Parmelee :

> The first and foremost preventive of police corruption is the promotion of honesty in the government in general. Specific measures which may be used are to remove the administration of the police as far as possible from partizan politics, to make the tenure of office in police positions permanent, and to make the remuneration of the police adequate to satisfy ordinary needs and reasonable desires, thereby diminishing as far as possible the incentive to supplement their pay by means of dishonesty and failure to perform their duty.

To revert to provisions of the Indian Penal Code, we may say the code has provided against taking illegal gratification in various forms and ways, disobeying law with intent to cause injury to any person. framing of incorrect document with intent to cause injury, unlawfully engaging in trade, fraudulent personation of public servants. and wearing garb or taking token used by public servant with fraudulent intent

The provisions are adequate and wide ; more so because public servants are liable to departmental punishment in addition.

This chapter also suffers from over-elaboration. What was needed was to provide against dishonesty by public servants and its abetment. Sections 162 and 163 could be merged together or even omitted by relying on the general provision against abetment and attempt (section 164 in such case could also be widened) Section 165 is a variation of 161 and might have been merged in it. Section 166 could be made wide enough to cover 167, 168, and 169. Section 170 could be dispensed with as the offender falling under this in its injurious forms might be dealt with under the offence of cheating.

I foresee critics arguing that by widening sections we may make for confusion I shall dispose of this contention towards the conclusion of this Survey.

Dishonesty on the part of a public servant could perhaps be made a cognizable offence as by this process, the gravity of the offence would be recognized, institution of cases before the police by a third person or on police officers' own information would be possible and the state could then run the cases at its expense through the Court-staff. Cases would also then be 'investigated' and not merely run by private parties against odds as at present.

This is a provision which will be favoured neither by other departments of public service nor by the public until the police have themselves given ample evidence of honesty and impartiality.

Offences Relating To Elections

A supplementary chapter (IX A) was added in 1920, the legislature seeking thereby 'to make punishable under the, ordinary penal law, bribery, undue influence and personation and certain other malpractices at elections not only to the legislative bodies, but also to membership of public authorities where the law prescribes a method of election ; and further, to debar persons guilty of such malpractices from holding positions of public responsibility for a specific period'.

Various provisions have been made in the 9 sections added in this new chapter. Corrupt practices are extremely prevalent despite these provisions It is doubtful if offences of this nature should be appended to the main Code. They are later accretions and should perhaps come in a supplementary compedium of minor codes along with the Gambling, Motor Vehicles and the host of other acts. For reasons why I think so, the reader is referred to the concluding portion of this review.

The provisions have been wide but the actual use made of these so far has been little. With watchful opponents jealously praying into affairs favourable to the other side, it is expected a freer use of the provisions will come to be made.

Contempts Of The Lawful Authority Of Public Servants : False Evidence And Offences Against Public Justice

As a necessary part of the administrative machinery of a country, the public servants possess certain exceptional rights and privileges All disobedience to the lawful authority of public servants has thus been denounced. Contempts in various forms have been provided against The order of the public servant in each case must be legal and its disobedience intentional. There are a few offences which affect the dignity of a particular class of public servants, such as judges

Avoiding service of summonses, preventing it, not responding to them, omission to produce documents when legally required to do so, omission to give notice where bound, furnishing false information, refusing to take oath, to answer questions, to sign statement, making false statement on oath or affirmation, laying false information with intent to cause a public servant to use his lawful power to the injury of another person or to do or omit anything which he ought not to do or omit, resisting taking of property by lawful authority of public servant, otherwise obstructing public servant in the general or specific discharge of his duty, disobeying order lawfully promulgated, etc . etc , have been provided against

The next chapter is analogous and has provisions against giving false evidence and against offences defeating public justice Giving false evidence is the first item and is certainly very grave an offence in view of the injury it may cause to others or the end of justice it may defeat Generally speaking, offences consisting of falsehoods may be in relation to (*i*) pleading ; (*ii*) statements made before a public servant other than a Court of Justice ; (*iii*) judicial proceedings

No commandment is more often broken with so little concern than 'thou shalt not give false evidence'. False impressions, frail memory and inadequate discrimination are causes of unintentional falsehood which can be found diffused throughout the social fabric. Such falsehood has human frailty as an excuse. The remedy lies in a more elevated sense of justice in making statements and the cultivation of a scientific frame of mind

Intended lies, however, are to be met in no less shocking a volume People lie to conceal something, to aggravate some other ; to alarm a foe, to please a friend ; to cause a friction, to ease a situation ; to cause trouble, to save an injury ; to create a prejudice, to improve an impression A great many 'rationalize' their 'lies' by inventing excuses, many others accept mild falsehood as a necessary evil of social intercourse. A few only refuse to succumb to any circumstances and perhaps go down without making any appreciable impression on the vast majority

These falsehoods and lies are outside the scope of the state to remedy and they only point to a new orientation needed to human education, education being understood in a very wide sense. Prophets laid down the commandment but men will yet have to find the procedure.

To revert to the provisions, we find that only falsehoods of the various forms already enumerated have been dealt with in this chapter.

The Indian Penal Code defined 'false evidence' to cover a wider field than 'perjury' under the English law. The essentials of the offence under the Code comprise :

(i) legal obligation to state the truth ; (ii) the making of a false statement ; and (iii) belief in its falsity. The legal obligation to speak the truth because of an oath, an express provision of law to state the truth, or a formal declaration required to be made by law, is stressed. The statement made must be proved to be false. Exaggerations are not taken as false. The falsehood must be intentional. Knowledge and belief in falsity of the statement are indispensable. Conflicting statements made at different times through loss of memory are not to be counted as false.

The chapter makes various provisions all intended to aid public justice.

In spite of all this, in practice, witnesses everywhere lie and very pervasively, and that for various reasons

In the first place, the 'bargain theory' of justice that still holds good ensues in the form of the prosecution charging the accused with not only the bare degree of crime they are said to have really committed but with some exaggerated form of it so that after a sort of credit and debit, the real guilt may hang round their necks whereas the accused instead of giving out what has actually happened begin by denying everything altogether. Evidence mustered on the two sides is in the shape of complete affairmation and whole-sale denial. The outcome thus is that a body of individuals of average or less than average ability who could not tell the truth even if they wanted to, who usually have little of the truth to tell and who are not allowed to tell even all of that, and who are frequently instructed to depose in one way or another, present largely worthless and strangely twisted tales before the court. The business of the court thus becomes a sort of sifting and winnowing and hence the need for a scientific outlook on its part.

In the second place, interested witnesses come forward not to aid justice but to uphold the cause of the side they represent.

In the third place, witnesses who are apparently disinterested are generally disinclined to be dragged in a matter in which they have no direct interest. When they do come, they have been canvassed by the one side or the other. It thus so happens that the most hopeless criminal can get together a few men to depose in his favour.

These difficulties have only detracted from the value of oral evidence and scared scientists off into finding some more reliable way of determining guilt. We have discussed this tendency elsewhere.

Prosecutions in actual cases of giving false evidence are rare because of the twist that can always be put to a statement by a witness, especially when tutored by ingenious brains.

The most important sections in these two chapters are 182 and 211 both of which afford protection against false accusations and vexatious proceedings. The former provides against public servants being unnecessarily harassed with false informations or members of the public with false accusations. Thus if a man lodges a false information to the police that his house was burgled but does not name anybody as a suspect, he is liable under this section because such information is worked out by them at some cost of time and energy. Such cases do not come under purview of section 211. In this, the *false accusation of a person* is essential and a *criminal proceeding* must have been instituted. The latter section is thus more limited in scope although it is more serious of the two in cases where both apply. The distinction is not very marked as would appear from the great divergence of views among the various High Courts in India.

These two sections are comparatively widely used. False accusations are by no means infrequent and cases are on record in which even charges of murder were brought while the alleged deceased were loafing about elsewhere in disguise.

Besides the provisions regarding false evidence or accusation, the chapter consists in others defeating the ends of public justice, such as concealing corpus delicti, screening and harbouring offenders, dishonestly making false claim in court, escaping from custody, unlawful return from transportation, contempt of court, etc., etc.

Now for criticisms.

I have grouped together the two chapters here for discussion as they are so allied to each other. Section 172 is partially unreasonable and very difficult to prove. The absconding must be with the intention of evading service which again implies that the absconder knew that a process had been issued, and that he was attempting to defeat it by his flight. These ingredients are difficult to prove. Besides, law should take other steps to ensure service, such as proclamation, issue of body-warrants, etc., etc. Sections 174, 175, 178, 179, 180 could all be merged together, all relating to various forms of lawful directions of a public servant. At this age, there may be objections to retaining the old formality of an oath. The judicial oath is a painful operation from which witnesses may now be spared. There are people, who, oath or no oath, will speak the truth but very few of the vast generality of witnesses are so touched by the sanctity of the oath, as to swing back from tutored courses of studied lies or suppressions. It hurts a decent man to hear God Almighty called upon in a few hurried words and then ignored. How much He *is* ignored will appear from the pervasive extent of lies and falsehoods we have just indicated. Sections 183, 184 and 189 could all go in 186, if this were made slightly wider. They are but variations of obstructing a public servant. Section 193 should have sufficed for false evidence. It might have been made punishable with imprisonment for ten years. Anything beyond that is hardly justifiable. As they are at present, sections 194 and 195 are too severe. The former is, in fact, more severe than section 307 which deals with attempted murder. Thus, the case of one who gives or fabricates false evidence even maliciously intending that he will thereby cause any person to be convicted of an offence which is capital—always a remote and difficult thing to achieve—is certainly less heinous than of one who fires at a man with the immediate object of killing him outright. It is only to be expected that the machinery of justice should be proof against mechanical convictions ; all evidence tendered must be sifted and winnowed properly. Sections 202 and 203 could be merged together. Section 205 could be left over to be dealt with under false personation, cheating by personation, or defeating ends of justice. Section 217 could be merged in 166 by making the latter sufficiently wide. At any rate, sections 217, 218, 219, etc., should have formed part of the chapter dealing with offences by or relating to public servants. I should think there is room for further criticism of these two chapters on lines indicated already.

I must ask the reader to revert to what I have said about amalgamations, etc., in the wide sense, towards the conclusion of the review of offences against the public tranquillity.

Offences Relating To Coin And Government Stamps

It has been the practice of all governments to severely punish counterfeiters of their own coin. Coins form the currency of the land and much of the prosperity of the country and its credit with foreign nations depends on the preservation of their purity and reliability. Revenue stamps of Government are also valuables having a currency and provisions have therefore been made against counterfeiting them.

G. L. Hart who wrote a booklet on 'Counterfeiting in India' expressed the opinion that 'of all the civilized countries of the world, India perhaps leads the way in this form of crime and the Government of India has a serious problem to meet'.

The materials used by counterfeiters to cast coins are commonplace and in most cases can be used for purely domestic and other purposes. The comparative ease with which a passable semblance of a coin can be made and the coin passed has added to the volume of the crime. Many unlettered persons in remote villages carry on this nefarious trade.

The criminal classes specially addicted to this form of crime are the *chhapparbands* and *Marwari Bauriyas* of whom mention has been made under the 'criminal classes' in Appendix A.

The processes involved are allied to the crime of cheating and swindling. In the case of stamps, they are akin to forging. As the offences here enumerated are rather serious, they have been specially provided for. Counterfeiting currency-notes and bank-notes also could in fairness be included in this chapter. The Law Commissioners did not make any provision relating to paper currency as, probably, it was not in vogue at that time. Provisions for this class of crime were made in 1899 and sections added to the chapter on 'offences relating to Documents and to Trade or Property Marks'. Counterfeiting currency notes is even more aggravated a form of crime than counterfeiting coins. The omission to include those sections in this chapter has given rise to an anomaly inasmuch as when offences in relation to counterfeiting coins are liable to be dealt with with enhanced punishment on subsequent convictions u/s 75 I. P. C., offences in relation to counterfeiting notes are not !

All these are heinous offences and have been suitably provided against in the code and later amendments. Counterfeiting, having instruments for counterfeiting, import or export of counterfeit coin, delivery and possession thereof, etc., etc., in the various forms have been dealt with.

I have given a few years' figures of coining in Bengal in the chart in Appendix C. These forms of crime are fairly prevalent but in most cases, as it is everywhere, the man who commits a crime of this nature often leaves a trace of his criminality.

There are ordinarily three classes of counterfeit coins ; Cast counterfeit ; Struck counterfeit ; Cast and Struck counterfeit. The first class is the most numerous and the third very rare.

Imperfections are detectable on scrutiny and even a layman can often spot the false coin. Such coins are often passed off after dusk. Very many offences go unreported.

Offences Relating To Weights And Measures.

The gist of offences under this chapter is a fraudulent deviation from the weights and measures current in any particular locality. No uniform standard has yet been laid down or evolved The offence, in short, consists in cheating by using false weights and measures and making a person believe that they are really what they seem to be. In England the weights and measures are regulated by a Statute. The provisions here closely follow those there.

The intention to defraud is the essential part of the offence. It has been made lawful by the Criminal Procedure Code for an officer in charge of a police station to inspect or search for any weights and measures which he has reason to believe to be false, and if they are so found, to seize them

Some of these offences could very well be included under 'cheating' but provisions here to deal with possession of false weights and measures, etc., are useful.

Offences Affecting The Public Health, Safety, Convenience, Decency and Morals.

The very title indicates the class of offences dealt with in this chapter. They cover loosely what we know of as public nuisances. Where nuisances, besides being injurious to private persons, are also detrimental to the public, they are treated as public nuisances and are punishable by a public prosecution.

There was no statutory definition of a public nuisance in English Law. The Indian Law Commissioners largely borrowed from one attempted by the authors of the Digest of Criminal Law.

All nuisances possess one common feature. They cause or are likely to cause injury, destruction, danger or annoyance of a person or persons collectively. The definition of a *public nuisance* is sufficiently clear and may be instructive.

> A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.
>
> A common nuisance is not excused on the ground that it causes some convenience or advantage.

Three classes of persons are sought to be protected : (a) the public ; (b) the neighbours as distinct from the public ; and (c) persons possessing a public right.

The principal cases of nuisances specifically dealt with are :

(1) Spread of infection.
(2) Fouling water.
(3) Making atmosphere noxious to health.
(4) Adulteration of food, drink and drugs and sale of the same.
(5) Rash driving.
(6) Rash navigation.
(7) Endangering public ways.
(8) Negligent handling of poisons, combustibles and explosives.
(9) Negligence with respect to
    (a) machinery.
    (b) buildings.
    (c) animals.
(10) Spread of obscenity.
(11) Public gambling in lotteries.

There is one section which relates to cases not otherwise provided for.

These are of the nature of general nuisances. More detailed provisions have since been made in separate special and local laws. The Gambling, the Food Adulteration, the Factory, the Motor Vehicles, Acts, etc , etc., are examples to the point.

The Criminal Procedure Code has laid down means relating to the abatement or prevention of nuisances.

Offences of the nature described are extremely prevalent and many of them would be like quasi-criminal acts of the modern era. People, however, put up with a great many of minor inconveniences without minding them so much.

Offences Relating To Religion

The need for some provisions against offences relating to religion is paramount in India especially, where men and women profess all the principal religions of the world, ancient and modern, without being either segregated geographically or politically. There is perhaps no country in the world in which the Government has so much to apprehend from religious excitement among the people. As the Law Commissioners observe, the Christians are numerically a very small minority of the population but in possession of the highest posts in all branches of the administration. whereas there are millions of Mahomedans, of differing sects, but all strongly attached to the fundamental tenets of Islam, and tens of millions of Hindus, as strongly attached to doctrines and rites which Christians and Mahomedans join in reprobating. Such a state of things, they rightly affirm, is pregnant with dangers which can only be averted by a firm adherence to the true principles of toleration Desecration of religious places and causing disturbance in religious worship, wounding religious feelings, etc, are thus provided against.

We have studied the potency of religions in various connections We have seen how they evolved ; have been adhered to. Religions have, at one time, been predominantly potent in guiding the affairs of men, political, social and even personal They are now studied on an evolutionary basis and each religion is given credit for whatever is intrinsically noble and uplifting in it.

In India, however, men and women still retain exclusive regard for one religion and extol it over all others. They guide their personal and social lives according as the religion permits or enjoins and base their hopes and fears on it.

The question whether insults offered to a religion should depend on the question whether that religion be true or false should not arise at all, inasmuch as discussion tends to elicit truth but insults have no such tendency ; they can be employed just as easily against the purest faith as against the most monstrous superstition. Fortunately for mankind, unhampered advocacy of religion is now possible in all civilized countries. Education is dispelling prejudice and the progress of science has been attacking the superstitious side of every religion without trying to supplant it by any sort of irrational dogma. Better understanding is bound to triumph in the long run.

Some of the Moghul rulers were eminently successful in fostering toleration by example and precept and the British Government has also hitherto acted with eminent judgment on principles of toleration. That clashes occur is really regrettable but one can put them down to human imperfections and to political machinations. The most desirable goal ahead of India is mutual understanding of the various people and everything that is done by leaders and people themselves towards this goal is eminently in the right direction.

It is nowhere laid down what a 'religion' is. The sections have not been made use of to any appreciable extent.

Offences Affecting Life and the Human Body

Naturally enough this class of offences is now considered the most serious so far as the individual citizen is concerned. One's life is dearer to one than any other possession in the world and one would look up to the state for its protection against all sorts of injury.

Offences falling into the category of personal injuries comprise (i) murder ; (ii) voluntary culpable homicide ; (iii) grievous hurt ; (iv) hurt ; and (v) assault. Kidnapping, abduction and forced labour have also been included under this category since they involve violence to personal freedom. Rape and unnatural offences relate to sexual violence but do take the shape of hurts and assaults although of an aggravated type because at least of the attitude of society towards these forms of crime.

Offences against the person have ever been committed by mankind. To take the old order of popular history, we see Abel slewn at the hands of his brother. The first generation itself thus showed the way.

In the modern version of the origin of the human species, we read palpable stories of the whole animal kingdom being in a state of war, the stronger eliminating the weak and the fittest surviving. By perhaps some accident living organisms have come to subsist by absorbing others, and between the wolf and the worm there is a formidable catena of intermediaries, one victimizing another and being victimized by yet another ! It is, however, a wrong reading of the situation so far as human beings are concerned for it can very easily encourage 'Nazi purges' and 'Soviet liquidations' to the undoing of humanity. One can still find ample evidence of Nature's toleration when one scans the state of nature which preserves the weakest and the strongest side by side,—the elephant and the ant, the wolf and the deer. If innumerable species have died out, innumerable others, far weaker and far more innocent, are still persisting.

If we look further, we shall see that in the same species there occur strifes but most of them go no further than mere squabbles, so to say. The instinct of pugnacity stages a sort of temporary scuffle between two or more and the whole thing evaporates in most cases in howling, growling, gnashing of teeth or at most biting and clawing Few cases are fatal and the erstwhile foes quietly get back to their old ways of food-hunting

Unfortunately for mankind, the same instinct which we inherit from the animals is reinforced by very many others and the brains which struggle hard to save lives on the verge of the grave invent ever new and varying ways of injury and destruction ? Tragically enough, more brains are now bent on inventing methods of self-destruction than self preservation. Far more resources are being used towards destroying than salvaging. What Christs and Buddhas achieved the modern votaries of the doctrine of the so-called 'fittest' are undoing.

These reflections force themselves to one contemplating the nature and extent of offences 'affecting life' although our immediate task is to comment on the sporadic and specific offences of the nature the criminal administration is called upon ordinarily to combat.

The psychological roots of this class of offences can be traced back to fundamental traits of human mind and character, such as the powerful emotions of anger and the various instinctive reactions to injure the object of anger, envy, or jealousy. Unfortunately still, emotions play a larger part in human affairs Everywhere there is a formidably large percentage of crime against the person although we have travelled so far down the ages when primitive justice afforded comparatively little protection to human life and limb.

This lack of protection was due in part to the low regard for human life of a superstitious primitive people. Murder and homicide were often regarded as private injuries until civilization advanced and were the occasions for vengeance by the injured party or his relatives.

The specific causes leading to this class of crime can be found within the range of social intercourse. The victims and the offenders are generally of the same social group and have residences not very far apart. Such crimes of personal violence are generally committed against persons with whom the offenders have personal dealings. They develop out of conversation, romantic relations, business transactions and social dealings; they are committed against friends and acquaintances.

A trite Indian adage puts down the majority of such crimes to "*Zan, Zamin, Zar*" (woman, land, and gold) thus stressing the parts played by sex and cupidity in all their complexities Many of the traditionally famous wars were over woman. She still excites not only the fondest passion but also the strongest aversion, hatred, and jealousy, in the many ways she can react. The extreme brutality of a rejected suitor was exmplified lately in a case in New York in which a young girl, Antoniette Imperiale, was first beaten by her chauffeur suitor, Vincent Franco, with an iron pipe till she was unconscious, then shot twice, and then her prostrate body was repeatedly driven over! Franco turned the weapon on himself finally but it jammed. Many other murders are being committed all over the world over woman.

A rather curious and unusual case which I happened to supervise was one of murder by a robust Mahammadan youth of his own sister. This was in September, 1934. The case occurred at Bokainagar, P. S. Iswarganj, District Mymensingh, Bengal. The girl was married but was suspected to have been carrying on an intrigue with some villagers. The disgrace she brought to the family moved the youth to great indignation. He then dug a pit in a jungle, called his sister there to help him in collecting wood and suddenly pushed her down into the pit and buried her alive! The wailings of her parents accompanied with private admonition drew suspicion and the case came to light only long after the incident. The case failed in court as the parents, main witnesses, naturally turned hostile. An exaggerated sense of family honour led to this crime.

'Land and gold' represent the material possessions after which mankind hankers and which are another potential source of personal conflicts. Murder for gain is comparatively rare but homicides, hurts and assaults between disputants over property or by robbers and plunderers are innumerable Murder for gain usually takes the form of murder of prostitutes for valuables in their possession. of children for the ornaments on their persons, of owners and proprietors for immediate inheritance of those interested, or of persons insured so that the insured money may get readily into hands of assignees.

The Pakur case is one of the most notorious murder cases of the world. It is of the nature of one for gain but the procedure adopted was at once novel and romantic, so to say.

The case which was up before the Courts here (Bengal) some time ago was characterized by the Calcutta High Court as 'probably unique in the annals of crime' It was unique in many senses. In the first place, it was a case of fratricide with a view to doing away with a younger brother in a zeminder family in order to achieve monopoly and mastery of the family property. In the second place, this murder for gain was contrived by the elder brother in a very ingenious method. In the third place, responsible men of the medical profession were involved in this heinous crime. In the forth place, the trial was protracted for a long time while the public were watching the proceedings with angry interest. The accused were arrested in Feb. 1934, were committed for trial in May, and were under trial until February, 1935. Two of the accused were sentenced to death but remained under such sentence for approximately ten months, the hearing of the appeal in the High Court being delayed for various reasons. The sentence was modified to one of transportation for life.

The case is one that should call for a brief mention here. In recounting the facts of the case, I shall closely follow the wording of Justice Lort-Williams of the Calcutta High Court who with justice Nasim Ali heard the reference and the appeal.

On the 4th. December 1933, Amarendra Chandra Pandey died in Calcutta. It was alleged that he died of plague, the germs of which had been injected in his arm by some person, who remains yet undiscovered, at Howrah Station on the 26th of November. Benoyendra Chandra Pandey, Amarendra's half brother, was charged with having conspired with Dr. Taranath Bhattacharjee and others known and unknown, to murder Amarendra in pursuance of which conspiracy Amarendra was murdered in the manner alleged. Various incidental charges were also added against individuals.

Benoyendra and Amarendra were half-brothers and members of the Pakur Raj family and jointly inherited their father's estate in 1929. At the time they were 27 and 16 years old, respectively. They were also joint reversionary heirs of their aunt Rani Surjabati. Benoyendra became the *Karta* of the family and pursued a course of life which, rightly or wrongly, offended the family. It was felt that he was extravagant and did not care for the comfortable up-keep and education of the younger brother. This friction ripened into mutual hostility and Amarendra, soon after he attained his majority in 1931, began to assert his rights. Since then friction grew more and more in virulence.

During the Puja vacation of 1932, Amarendra was staying with Surjabati at Deoghar. One day Benoyendra came there accompanied by a compounder. He and Amarendra went for a walk together, after which Benoyendra and the compounder departed. A few days after, Amarendra began to be ill and his illness was diagnosed by a doctor as due to tetanus infection. Benoyendra when informed promptly visited Amarendra with Taranath Bhattacharjee, a doctor from Calcutta, instead of the family physician. On that occasion there was difference of opinion between physicians already attending Amarendra and the doctors brought in by Benoyendra, Taranath and subsequently two others. The relatives of Amarendra became suspicious about both Benoyendra and his doctors. Amarendra's illness left him a permanently damaged heart and an otherwise broken health.

In November, 1932, there was a fresh friction, this time over Benoyendra obtaining withdrawal from some banks of some cash deposit without Amarendra knowing much about it. The latter, however began to seek protection against unauthorized exploitation by Benoyendra of the family finances.

The strained relation betwen the brothers came to a breaking point and Amarendra and those interested in him feared that Benoyendra might be up to anything to injure Amarendra. The brothers met and discussed at length the question of partition of the estate.

While in Calcutta, (Nov. 1933), Amarendra went to visit the Purna Theatre with a party of his relations. Benoyendra was seen hovering about the Theatre and its precincts in the company of another man described as short, dark-complexioned and wearing Khaddar. Surjabati and Amarendra decided to leave Calcutta on the 26th November and Benoyendra learnt about this the night before. On that night he was seen at Howrah Station in the company of a short, dark-complexioned man in Khaddar. The next day he met Surjabati and expressed eagerness to see her and Amarendra off at the Howrah Station at the time of their departure. As arranged, Surjabati and the party arrived at the Howrah Station and were met by Benoyendra. Amarendra was at the head of the procession and Benoyendra at the rear. On the way Amarendra was jostled by some one coming from the opposite direction whom he afterwards described as a black man in Khaddar.

Immediately after, Amarendra felt a prick in his right arm and cried out, "Some one has pricked me". Benoyendra made light of the matter saying it was nothing but Amarendra rolled up his sleeve and showed the mark of the prick to his relatives. Amarendra was asked not to proceed away from Calcutta as they suspected something but Benoyendra sent him off saying they were making a mountain out of a mole-hill. Amarendra and party got more and more anxious and Amarendra was persuaded to come back to Calcutta for medical advice and he did so on the 29th of November He was examined by Dr. Nalini Ranjan Sen Gupta who found the mark of a prick on his arm like that of a hypodermic needle. On the advice of this doctor and immediately blood culture was made by Dr. Santosh Kumar Gupta. On the 4th Dec. 1933 Amarendra died. After thorough and exhaustive tests it was definitely established that Amarendra's blood was infected with germs of bubonic plague and this was reported to the public health authorities.

Immediately after Amarendra's death some of his relatives thought of instituting a police enquiry as it was then known that Dr. Taranath was a trained bacteriologist and that he was very friendly with Benoyendra. Eventually a petition was presented to the Deputy Commissioner of Police at Calcutta though as late as on the 22nd January, 1934, and sub-inspector Sarat Chandra Mitra was deputed to make a confidential enquiry.

Benoyendra was arrested on the 16th February, while on his way by train to Bombay, the case was formally instituted on the 17th and Taranath arrested on the next day. The investigation was conducted at Bombay and Calcutta on valuable information about visits paid by Benoyendra to Bombay both alone and in company of Taranath.

It was ascertained that on the 12th. May, 1932, the day on which Amarendra executed the several power-of-attorney, Taranath sent an express prepaid telegram to the authorities of the Haffkine Institute at Bombay asking them to send virulent plague culture for laboratory work. Benoyendra at this time was staying at Calcutta. Taranath failed to get the supply as the institute refused it unless Taranath first obtained the permission of the Surgeon General of Bengal.

Later in May, Taranath approached Dr Ukil of Calcutta, and induced him to believe that Taranath had discovered a cure for plague and to allow Tara Nath to work in his laboratory. Plague culture was obtained from Dr. Naidu of the Haffkine Institute but Taranath was not allowed to handle it. Nothing came of an attempt to sub-culture the strain and Dr. Ukil refused to indent for culture a second time. Eventually, however, in 1933, Taranath obtained from Dr. Ukil a letter of introduction addressed to the officer-in-charge of the Haffkine Institute to the effect that Taranath had discovered a cure for plague and that he be given facilities for making experiments there. In April, 1933, Benoyendra also went over to Bombay and helped or sought to help Taranath in this quest. On the 1st. July, Benoyendra again went to Bombay and made strenuous efforts to obtain plague culture from two surgeons attached to the Haffkine Institute but failed. He, however, gathered information that he could get plague culture at the Arthur Road Infectious Diseases Hospital Here he induced Dr. Patel, the superintendent to allow his friend Taranath to work on his alleged cure. At Benoyendra's request one tube of live plague culture was obtained here pending arrival of Dr. Taranath. Taranath arrived on the 7th. July at Bombay and was put up by Benoyendra and the two went about together to purchase rats in the market. Taranath was allowed free scope for work in the laboratory and one of his experiments on rats was successful to the extent that they died. On the evening of the 12th. July Taranath offered an excuse to the doctor he was working with that he had an urgent work in Calcutta and must leave immediately. He promised he would return to complete the work but he never did nor ever corresponded later. Benoyendra and Taranath left Bombay together for Calcutta on the same night.

While at Bombay Benoyendra tried hard with the insurance companies to get Amarendra's life insured for Rs 51,000/ with a condition that the policy should not be contested after Amarendra's death. This unusual condition scared the companies off and no policy could be effected. Benoyendra explained that he had been to Bombay on business connected with the film industry and that he made enquiries for Tara Nath purely as an act of friendship.

Medical evidence was adduced to the effect that the culture could be carried from Bombay to Calcutta and kept alive for the period from July to December. Upon arrest Taranath first denied any idea of any plague cure and any visit to Bombay. He later altered the statement and admitted that he had been to Bombay but not with Benoyendra. He made other conflicting statements also. Benoyendra also fared in the same way.

Taking into consideration the incidents of Bombay and Howrah Station, and the medical and documentary evidence, the High Court Judges, came to the conclusion that the reasonable inference was, that the two convicted men, Benoyendra and Taranath, conspired to murder Amarendra, and that for this purpose they provided some person yet unknown with plague culture which was obtained by them from Bombay as alleged and that upon their instigation murdered Amarendra by injecting the germs of plague at the Howrah Station, as a direct result of which he died. They dismissed the appeals and upheld the conviction of both, altering the sentence, however, of death in each case, to one of transportation for life, in consideration of various facts and circumstances of the case.

The motive of this heinous crime was abundantly clear. Benoyendra wanted to get rid of a toublesome partner and his attempt to get Amarendra's life insured for a heavy sum throws light on the fact that gain apart from revenge was also a main objective. The ingenious method adopted to do away with Amarendra was presumably suggested by Benoyendra's doctor friend who counted upon the apparent impracticability of a charge of murder being brought home in the circumstances. The detection of the case, however, would claim a standing tribute to the labours of those who were concerned with the investigation and the long and difficult trial involving masterly exposition of intricate evidence by Mr. T. H. Ellis, I. C. S., the trying Judge, would stand as a'notable trial' alongside of others as unique in the annals of crime as this one so successfully concluded.

Apart from such calculated cases of murder for gain or in vengeance, the bulk of offences affecting life arise out of emotional conflicts. The national temperament, so to say, has thus much to do with the prevalence or otherwise of this class of offences.

Looking abroad, we find very few murders committed ordinarily in England. Public opinion forces a thorough enquiry into every case occurring and results of investigation are astoundingly satisfactory. The case of Dr. Buck Ruxton who killed his wife and maid illustrates the elaborate and extreme care and caution with which police investigations aided by all sorts of scientific appliances set about to detect murderous offenders. We have outlined this case in Part IV of the book. There are perhaps less murders committed in London than in an Indian district of a small size; in a year.

I quote below some figures of Murder relating to England and Wales, as given in the Criminal Statistics issued by the Home Office :

Murder	1930—122
Ann Av.	1931—126
1910-14—153	1932—117
Number in	1933—141
1911—144	1934—120

The figures for the provinces of India will appear in Appendix C.

The United States of America, however, present a less pleasing feature and there seems to be a growing alarm at the appalling number of murders and homicides. This in spite of the immense strides in material prosperity and scientific advancement of the people.

The American Bar Association some time ago undertook a survey of the state of affairs so far as murders and homicides went, and gave statistics. During one year there were 260 murders in New York City, and 137 murders in Chicago. This total of nearly four hundred slayings in their two biggest cities was bad enough.

Sutherland studies figures of homicide for the years 1900—1929 critically and concludes that there is little 'reason to believe that murder and manslaughter as usually understood have increased appreciably in the United States.' He admits. however, that the homicidal rate there is much higher than in many European countries. He quotes from 'the Homicide Record for 1931' that the average rate in 31 American cities is 10.8 per 100,000 population, while it is 0.3 in Amsterdam, 0.6 in Liverpool, 1.8 in Berlin, 1.9 in Prague, 2.7 in Vienna, 3.3 in Brussels, and 4.4 in Rome. A considerable part of the difference, according to him, here also, is probably due to the greater frequency of excusable and justifiable homicides due to automobiles in the United States. Chicago has the higest rate of any American city.

Within India, races and other factors widely varying, Peshwar, Punjab and Bombay are rather notorious.

Figures, as I have said, may be seen in Appendix C.

Peshawar is one of the districts of the Frontier and accounts for a large percentage of murders. The population belongs chiefly to the Pathan or Afghan race which is described as follows :— "Brave, independent, but turbulent, vindictive character ; their very existence seemed to depend upon a constant succession of internal feuds .... Blood is always crying aloud for blood. Revenge was a virtue among them , the heritage of retribution passed from father to son, and murder became a solemn duty."

The Punjab and Bombay follow in line. Bengal figures of murders and culpable homicides ranged between 412 and 624 and 214 and 371 respectively per year in the period between 1921 and 1936. The figures exclude Calcutta.

Ways of killing have varied from stabbing and battering with crude implements and weapons to the use of poisons, firearms, and explosives. The Pakur case just described extended to a use of plague bacilli !

After this general survey, we can revert to provisions made in the Indian Penal Code to prevent or combat offences against life. We need not go into details.

Culpable homicide has been defined thus :

> Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanatory clauses include the acceleration of death by bodily injury where the deceased was already suffering from disease or disorder as also cases where by skilful treatment or proper remedies death might have been prevented, but exclude causing the death of a child in the mother's womb. These latter cases are *dealt with in specific sections.*

In the first place, there must be causing of death of a human being, meaning a living man, woman or child at least partially delivered.

In the second place, doing an act is necessary but act also includes *illegal omissions. Death may thus* be caused as much by the positive doing of a thing as by omitting to do what a person was legally bound to do. The authors of the Code illustrated this by a few examples. One is :

> A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder ? Under our rule, it is murder if A was Z's gaoler, directed by law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-ridden invalid, and A a nurse hired to feed Z. It is murder if A was detaining Z in

unlawful confinement, and has thus contracted a legal obligation to furnish Z, during the continuance of the confinement with necessaries. It is not murder if Z is a beggar, who has no other claim on A than that of humanity.

In the third place, it is necessary that there should be the intention to kill or knowledge that the act was likely to cause death. The authors said :

> To punish as a murderer every man who. while committing a heinous offence, causes death by pure misadventure is a course which evidently adds nothing to the security of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellowcreature The utmost he can do is to abstain from everything which is at all likely to cause death

Either the *intention* to kill or the *knowledge* is necessary of the likelihood of death following. Now there are degrees of likelihood as there are degrees of knowledge. There is undoubtedly a great difference between acts which cause death immediately, and acts which cause death remotely ; between acts which are almost certain to cause death, and acts which cause death only under very exceptional circumstances. This is a matter to be considered by the Court when estimating the effects of the evidence in a particular case.

Murder is the most heinous form of culpable homicide and it has been defined as *follows :*

> Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death cr
>
> *Secondly —If it is done with the intention of causing such* bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or
>
> Thirdly.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or
>
> Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, and commits'such act without any excuse for incurring the risk of causing death or such injury as afore said·

The clauses are clear. The fourth clause has been illustrated thus :

A without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

The English law defined murder as 'the killing of any person under the King's peace, with malice prepense or aforethought, either express *or* implied by law.'

The Indian Code throws the burden of proving the essential ingredients which constitute murder on the prosecution.

The causing of death is common to both culpable homicide and murder. The true difference lies in the degree ; there being the greater intention or knowledge of the fatal result in the one case than in the other.

The Code enumerates certain cases as excepted from being included under the category of murder, viz. those which have mitigating circumstances connected with (*i*) provocation ; (*ii*) private defence ; (*iii*) exercise of legal powers ; (*iv*) absence of premeditation ; (*v*) consent.

We need not go into details as to nature of these mitigating circumstances.

The extreme penalty of death has been laid down for murder and the alternative of transportation for life has also been allowed. Of the two, death is the ordinary and usual sentence. This fact weighs heavily with the Jury who are generally reluctant to return verdicts of guilty in murder cases.

It is undoubtedly true that the death penalty, if not entirely dispensed with, should be attached to the most heinous offence and murder is one. We have however, discussed death as a penalty, in part III of the book.

For 'culpable homicide not amounting to murder', transportaion for life and imprisonment which may extend to ten years and liabilty to fine in addition have been prescribed. Sentences thus vary very widely according as are the circumstances in a particular case.

Sec. 300 is very involved and should be simplified. It is a laborious task for a judge to make a lay jury grasp the difference between sections 302 and 304.

The Code provides for certain other forms, such as murder by a life convict, causing death by negligence, committing suicide, and attempts to commit murder, culpable homicide, and suicide ; *thugee* ; death caused in causing miscarriage ; exposure or abandonment of a child or concealment of birth by secretly disposing of the body.

Murder by a life convict has been made punishable by death with no alternative sentence. It was hardly necessary to tie down judges as even in such cases circumstances may be partially mitigating. It is not safe to hold, as contended by some, that any punishment short of death in the case of the life convict would be no punishment at all. For, after all, the same thing can be said when a life convict commits any other offence than murder. As death *is* the usual sentence for murders, a judge will of course inflict it in case of a life convict. The section savours of specification without a point.

The section relating to death by rash or negligent act was added subsequently and supplied an omission. It corresponds to manslaughter by negligence in the English law. Offences under this head are viewed with leniency inasmuch as rash or negligent acts constitute public nuisances which we have already dealt with, but in this case aggravated by the fatal result. A person is not at liberty to do a thing which is dangerous in itself, or have charge of anything dangerous in itself without taking due care and caution so that others may not be injured, or conduct himself in such a careless manner as to risk loss of life. To quote an example from Stephen, if a surgeon was engaged in attending a woman during her confinement, and went to the engagement drunk, and through his drunkenness neglected his duty, and the woman's life was in consequence sacrificed, there would be culpable negligence of a grave kind. It is not given to every one to be a skilful surgeon, but it is given to every one to keep sober when such a duty has to be performed.

The negligence should be such as to have materially contributed to the death. This will appear from observations of Byles, J., to the grand jury, as quoted by Gour, in the case in which Hutchinson, commandant of the forces at Plymouth, was accused for death of a boatman from a ball which had missed the target and striking the waves had recochetted. He said :

> ...manslaughter was when one was killed by the culpable negligence of another. A slight act of negligence was not sufficient—all men and women were negligent at some time ; suppose a man were to fire a gun in a field where he saw no one, and as he fired another man suddenly raised his head from a ditch ; he could not say that man would be guilty of manslaughter.........But supposing a man were to fire down the High Street of Exeter because he saw no one, and some one was suddenly to appear, and he was killed, that would be culpable negligence in the man who fired the gun...

The defendant was acquitted in the case.

The police are frequently called upon to take cognizance of cases of this nature. It is incumbent, therefore, on them to grasp the precise idea underlying this section.

Contributory negligence on the part of the victim is often alleged by the accused. Though not a defence, *per se*, it may be relevant as a fact showing that the consequence complained of was too remote, and not the direct consequence of negligence.

There is some controversy among philosophers as to the propriety or otherwise of punishing an attempted suicide. The stoic philosophers of old and votaries of many religions regard life as an evil and its destruction was construed as emancipation of an imprisoned spirit. The Civil Law tolerated an attempt to commit suicide, but the laws of Athens punished the would-be suicide by cutting off the hand that attempted the deed. Christianity put a special sanctity on human life and it was recognized that no one had a power to destroy this gift of God. Islam holds a similar view and a man committing suicide is held strictly to be incurring God's displeasure.

Law, therefore, reconized it as a crime and the suicide was denied the right of a Christian burial. In many cases, the property of the suicide was also declared forfeited. These thus took the shape of a posthumous dishonour and were regarded as likely to deter people form committing suicide. The Athenian Magistrates ordained the dragging of their nude bodies through the public places.

The punishment of forfeiture naturally visited the innocent and became so unpopular that it had to be abandoned and the right of burial in church was also restored.

The Indian Penal Code has provided for punishment of one who 'attempts to commit suicide and does any act towards the commission of such offence, with simple imprisonment for a term which may extend to one year, or with fine, or with both'.

The state has owned the duty of preserving lives and claimed the right to preventing persons from taking their own lives. Many criminologists now refute this idea, maintaining that there could be no right more fundamental than that of one to dispose of one's own life. Parmelee has discussed the law against suicide and definitely opined against its wisdom. He writes :

> The punishment of attempted suicide is based in large part upon the theological notion that only God has the right to take away life which he is alleged to give. But it is also partly for the prevention of suicide. For this purpose it is a grossly stupid measure. It can obviously be of no avail whatsoever in deterring any one so desperate as to wish to kill himself. It may, indeed, increase the number of suicides by driving those who are contemplating suicide to adopt more certain methods of killing themselves in order to avoid the penalty prescribed for those who fail in the attempt, but obviously cannot be inflicted upon those who succeed. Punishment may sometimes be justifiable for trying to avoid moral obligations, where an attempt at suicide was obviously for that purpose. But punishment for suicide itself can never be justified.

Jurists, however, maintain that they have found the provision as existing practically everywhere both salutary and deterrent. I must say that it is extremely difficult to say what precise effect such a provision actually has in such cases as various other factors would always claim a share.

Suicide must, however, be discouraged by other means. Man is by nature endowed with an instinct of self-preservation. This factor alone is one on which the Insurance Companies base their computations. It is mostly when a person attains a state of temporary insanity that he attempts this desperate step. Poverty or distress, loss of honour or fortune, violent shocks, etc., are among the circumstances in which a person is so driven. The available statistics seem to indicate an increase of insanity and suicide in modern times and this is probably the result of nervous strain due to the increasing complexity of human life.

The self-effacement or self-abasement preached by religions has often provided an impulse under which people may and actually do commit suicides. Examples are afforded by those who starve or torture themselves to death to attain *Nirvana*, or supreme beautitude by absorption in the Divine essence. The institution of *Suttee*, the abolition of which has been a triumph of civilization over superstition was supposed to involve the voluntary self-effacement of the widows. It was, however, in reality an oppressive formality to which all the near and dear ones worked the widows up. It really evolved into a sort of culpable homicide on the part of those who took part in the cremation. We have already discussed how actions from motives high and laudable to one section may yet be crimes from the point of view of society.

The Indian Penal Code next defines a 'Thug' and provides for punishment for being a 'thug'. We shall study 'thuggee' in connection with dacoity. This section can be done away with.

"Causing miscarriage" has been made punishable if it is not caused in good faith for the purose of saving the life of the woman. A woman who causes herself to miscarry has not been exempted from liability.

The offence of foeticide may be committed with or without the consent of the woman. One section relates to the one and another to the other. Causing miscarriage consists in causing the expulsion of the contents of the uterus after conception and before the term of gestation is completed. Violent or forced abortion is only penalized. We have seen that murder or homicide extends to causing death of a human being or child at least partially delivered. The case of the child in embryo or in advanced formation is met by the present provisions.

Causing miscarriage without the consent of the woman is obviously reprehensible and a sentence extending to transportation for life has rightly been prescribed. As to the wisdom of penalizing voluntary abortion, there may be difference of opinion now.

The principles underlying are (i) that the performance of an operation or other process in order to cause miscarriage is dangerous to the life of the mother, and it amounts almost to causing a grievous hurt with likelihood of causing death in addition ; (ii) such action also arrests the growth of population which is necessary or may be so for the welfare of society ; and (iii) it is also bound up with the old idea which denies one even the right to take one's own life and which must therefore deny all the more the destruction of a would-be life in the hands of other agencies.

With regard to voluntary abortion, I may very well refer here to the growing body of opinion, both among the lay population and in the medical profession, in favour of not penalizing it when it is carried out with adequate caution. In most countries interruption of pregnancy is a legal offence, punishable with more or less heavy penalties, except where it is necessary to safeguard the life or the health of the mother. In Soviet Russia, interruption of pregnancy by a properly qualified medical practitioner, in a public hospital, is permitted during the first three months, if the mother desires it. One or two other countries have enacted legislation of a similar nature. Let us review the position with respect to the principles just quoted.

The performance of an operatian or adoption of other process *is* fraught with dangers. The handling by laymen or quacks or even unqualified doctors is extremely so. With the advance of surgery, such operation is being done accompanied with lesser and lesser risk to life. As to the infliction of hurt, it is covered by the consent of the mother and her desire, the principle being a known one and enunciated in a section of the Indian Penal Code itself.

That such action would arrest the growth of population does not count for much now-a-days. It was Multhus who alarmed humanity by expounding rather the opposite theory, viz, that the population is increasing at too fast a rate and that there would remain the danger of shortage of food, etc., if it went on unchecked. The Birth-Control Movement has daily gained ground since then and it is admitted that it is better to leave a non-existent being where he may be than to usher him forth to conditions. of certain misery and want. Certain dictators, however, encourage more births but their motive is farthest removed from that of religionists and moralists who opposed on grounds of humanity. A mother would rather cause a miscarriage than let the off-spring be fattened for sluaghter or turned into 'cannon-fodder' :

That the state can deny the right of one to take one's own life has just been discussed in connection with the law against suicide. The same point extended has been pressed here also. There is, however, a growing feeling that the state has no right to interfere in a matter so private. Many sociologists proclaim the principle so aptly phrased by Victor Marguerítte '*Ton corps est a toi*' (Your body is yours). They claim that there may be many other reasons besides the health of the mother that may render interruption of pregnancy desirable. Thus for example, an illegitimate child is itself a source of dishonour for which our women may be socially or economically ruined. Even in the case of married women, the economic circumstances may be altogether forbidding. The arguments that may be led as against these contentions would deny, in the first case, that a so-called dishonour or sense of shame should be a sufficient justification for destruction of a life and, in the second case, that the selfish and frivolous anxiety of a woman should carry so much weight. Most gynaecologists are requested, they will urge, and with surprising frequency, by married women in excellent economic circumstances to terminate pregnancy !

I have presented both sides of the case which is an important modern issue. My own point of view is that the interruption of pregnancy, apart from voluntary birth-control against which nobody should have much to say, is always an evil and should be avoided by all means. But when after due consideration a mother so desires, the law should permit abortion as in Soviet Russia. For, however much we may say in favour of those who have legislated against voluntary abortion, it must be admittted that the law is more or less a 'dead letter'. The Law Commissioners did not themselves anticipate its enforcement to any appreciable degree and wrote :

> With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law on that subject may, in this country, be abused to the vilest purpose. The charge of abortion is one which, even where it is not substantiated, often leaves a stain on the honour of families The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest pest of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise his Lordship in Council *rather to suffer abortion, where a mother is a party to the offence, to remain wholly unpunsihed, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty*. •(The italics are mine.)

These considerations will always clinch the arguments in favour of those who are opposed to such penal legislation. Its effect is rather to induce people to terminate pregnancy more dangerously, more surreptitiously, by illegal means, than if termination were permitted so much so that the deterrent effect is almost nil. That society should ensure that the sinning unmarried mother be thus penalized is totally beside the point inasmuch as no imprisonment could, in the present state society, add to the grief of the sinner who has thus illegitimately conceived ! Her disgrace is complete without such artifical punishment. The result is that at the gap between the average family and its conscientious doctor, there enter the crude abortionists with all their shady methods. These are mostly the midwives and quacks.

On the other hand, permissive legislation on the line in Soviet Russia might, in many cases, provided secrecy of proceedings in the Public Hospital was further enjoined, save many lives from death and danger in the hands of the quacks. Careful observation of hundreds and thousands of cases in Soviet Russia has shown that if the operation is carried out in healthy women, by competent surgeons, with proper surgical precautions, the mortality and morbidity sink almost to vanishing point. Shady doctors, nurses, midwives or other quacks who make a trade of procuring abortion illegally would, in the event suggested, find adiminishing prosperity. A study of the Proceedings of the Royal Society of Medicine, the Medicolegal Society, the British Medical Association, and similar groups, would unmistakably show that, while the law has remained unchanged, the medical interpretation of the law is gradually but continuously being extended. We have spoken of the sociologists already.

Since the above was written, a case of great interest and significance has been up before a court (June—July, 1938) giving an opportunity for both sides of the problem we were discussing being presented. It will interest my readers to read of the case.

An obstetric surgeon and gynaecologist of London, Mr Aleck William Bourne, went to the length of courting a trial by doing what he considered to be a duty. He was up before the Central Criminal Court on an indictment charging him with unlawfully using an instrument with intent to procure the miscarriage of a girl under the age of 15. It was stated that the girl had been assaulted by soldiers Mr. Bourne's defence was that he performed the operation because there was danger to the girl's health if the child had been born. He said he could not draw a line between danger to life and danger to health. Mr. Bourne further declared that 99 per cent of the medical profession would have been agreeable to the operation being performed in the circumstances. Evidence in his support was given by prominent men and doctors. Mr. Bourne's point of view was bold and was thus put before the jury :

> What I have done is lawful, is right, is honest, and I have not committed any offence at all. What I have done is to get the law declared so that there should no longer be this controversy among the public and medical profession as to what a doctor is allowed to do and what he is not allowed to do.

Mr. Bourne's view, his counsel continued, which was shared by the most distingushed of his colleagues, was that were in the true interests of the patient's health, which involved with it the true interests of their lives, and it was, in his view. necessary to operate, he would operate unless in this Court it was laid down by the judge and the verdict of the jury that is was not to be done.

His counsel explained that the statute under which this matter was being tried was passed as long ago as 1861 (virtually as long ago as the Indian Penal Code). It forbade the unlawful use of an instrument for the purpose of procuring a miscarriage. No definition of what was lawful or what was unlawful was contained in that statute. Is was left to the direction of Judges and the good sense of juries. The question was, "Do the circumstances which make it lawful exist in this case ?"

Counsel then quoted an Act of 1929, called the Infant Life Preservation Act. There was, he said, one tremendous difference between that Act and this case. The case Mr. Bourne dealt with was the case of a girl in the earliest stages of pregnancy. The case contemplated in the Act was when a woman or a girl was in the act of having a child, and the child was being born. Mr. Oliver submitted that until that child had a separate existence it could not be murder. This Act stated that such an act as that could never be justified. He submitted that, in this case, they could speak properly of the preservation of the life of the mother when they spoke of the preservation of her health, because upon health depended her life ultimately.

The counsel remarked to the jury :

> I am going to ask you to take a wide and liberal view of the meaning of 'preservation of the life of the mother'. There are obviously other views you may take. The Attorney-General is asking you to take the view that before this operation could be undertaken one had to be satisfied, and honestly of the opinion that the mother would otherwise die. If that is the law he has got no defence. He does not pretend that he has. Can it be the law ?
>
> I say it is rather an extravagant proposition. It means that before pregnancy may be terminated a doctor has to say, 'If I do not terminate pregnancy the girl is going to die'. If he is faced with a practical certainly that she will have a complete mental and nervous breakdown, he must not operate. I submit that proposition cannot be right. It revolts one's sense of justice, and every other sense.

Mr. Bourne's view was, said his counsel, that with his knowledge, responsibility, and experience he looked upon the problem of this girl and came to the conclusion that the risks of allowing her to carry the child meant the risks of ruining her life. "If it be a crime in these circumstances to terminate that pregnancy, you would say so," he said to the jury.

There was no evidence to throw doubt upon the proposition that the mental health of this girl for the rest of her life was likely to be gravely prejudiced, and on that evidence, contradicted by no one, it could not be disputed, and it had not been disputed, that the operation Mr. Bourne performed was in order to save her from mental collapse.

The case against the accused would appear from the submission of the Attorney-General, who, replying for the Crown, said he did not submit to the jury that an operation coming within this section of the Act was unlawful if it were done to preserve the life of the mother. In considering this question he suggested that the jury should proceed on the basis that there was a fundamental difference between preserving life and preserving health. It was perhaps the vital issue in this case to realize that there was a difference between the two. The Judge had told the jury that the prosecution had to satisfy them that the operation was not done for the purpose only of preserving life. He submited that, on the evidence, that burden had been satisfied.

Mr. Justice Macnaghten, summing up, said that the charge against Mr. Bourne was a grave charge of illegally performing an operation on the girl who gave evidence.

Said the Lordship :

It is a grave charge and it is so regarded by the law. The punishment for the crime may be penal servitude for life. To judge by the cases that come before the Court, it is a crime by no means uncommon. This is the second case at the July Sessions of this Court where a charge has been preferred under this section, and I only mention that to show how different is the case now before you from the usual type which comes before the criminal courts.

Here is a man of the higest skill, who openly at one of our great hospitals performs an operation. Whether it was legal or illegal you will have to determine, but the performance of the operation was an act of charity without fee, and unquestionably Mr. Bourne believed he was doing the right thing in the performance of his duty as a medical man, as one of a profession devoted to the alleviation of human suffering. (The italics are mine).

He thought he ought to do it. That is the case you have to try to-day. It is, I think true that this is a matter which, so far as I know, no jury has ever had to determine in circumstances such as these. There was, it seems, even among learned counsel, some doubt about what was the appropriate expression of law in such a case as this

You will take the law from me, and if I err and you come to find the accused guilty, there is the Court of Criminal Appeal to put the matter right. I see no reason to alter or modify what

I said to you yesterday. It is that the question you have got to determine is this :

Has the Crown proved to'your satisfaction beyond reasonable doubt that the act which Mr. Bourne admittedly did was not done in good faith for the purpose only of preserving the life of the girl ? If the Crown has failed to satisfy you on that, Mr. Bourne is entitled to an acquittal. On the other hand, if you are satisfied beyond all real doubt that Mr. Bourne did not do it in good faith, for the purpose only of preserving the life of the girl, your verdict should be a verdict of guilty

Continuing, his Lordship said there had been much discussion as to what was the meaning of the words "preservation of the life of the mother " He remarked that he fully agreed with the criticism made by Mr. Roland Oliver that the Act of 1929, the Infant Life Preservation Act, dealt with the case where the child is killed while it is being delivered.

The Judge continued :

The proviso is that no one is to be found guilty unless it is proved that the act was not done in good faith to preserve the life of the mother. Those words express what, in my view, has always been the law in regard to the procurement of abortion.

It has rightly been said that this case is one of great importance to the public, and more especially to the medical profession, but you will observe that it has nothing to do with the ordinary cases of the procuring of abortion to which I have referred. My view is that it has always been the law that the Crown has got to prove the offence beyond reasonable doubt, and it has always been the law that on a charge of procuring abortion the Crown has to prove that the act was not done in good faith for the purpose of preserving the life of the mother. In the ordinary cases of the professional abortionist no question of that sort arises.

You have heard a great deal of discussion of the difference between danger to life and danger to health. I confess I have had great difficulty in understanding what the discussion really meant. Life depends on health, and it may be that if health is gravely impaired death results.

Commenting upon the borderline of distinction between danger to health and danger to life, the Judge said : "In a case where a doctor is of opinion that a child cannot be delivered without the death of the mother, in those circumstances he is entitled indeed, it is his duty to perform an operation with a view to saving the life of the mother, and the sooner the operation is performed the better."

The judge went on to say that various views were held by people with regard to that operation. Apparently there was divergence of views in the medical profession itself. There might be some women who desired the operation to be performed, but the desire of a woman to be relieved of her pregnancy was no justification for performing the operation. There were also religious convictions that the operation should not be performed in any circumstances; but that was not the law either. If pregnancy was likely to make the woman a physical or mental wreck they were quite entitled to take the view that a doctor who, in these circumstances and led by his belief, operated, was operating for the purpose of preserving the life of the woman.

They had to consider the case on the facts before them. Each case depended upon its own particular facts, and the circumstances of each particular fact, and the circumstances of each particular case must vary infinitely. If a doctor in good faith thought it necessary for the purpose of preserving the life of the mother in the sense that he had explained, not only was he entitled to perform the operation, but it was his duty to do so.

The law of the land had always held human life to be sacred, and the protection the law gave to human life extended to the unborn child. The unborn child must not be destroyed except for the purpose of preserving the yet more precious life of the mother. The question the jury had to consider was not whether they were satisfied that Mr. Bourne did the operation in good faith for the purpose of preserving the life of the girl, but whether the Crown had proved the negative of that.

The Judge, in his final direction to the jury, said:

If you think the Crown has satisfied you beyond all reasonable doubt that Mr. Bourne did not do this act in good faith for the purpose of preserving the life of the girl, then he is guilty of the offence with which he is charged. But if the Crown have failed to satisfy you beyond all reasonable doubt, by the law of England you are entitled to return a verdict of acquittal.

On the jury returning their verdict of not guilty. Mr. Bourne was immediately discharged.

The case is an interesting one and the judge had to propound the existing law only. We, however, have been discussing the very law itself and that the principle urged by Mr. Bourne should now be conceded.

Wrongful confinement has next been taken up, this having been defined as wrongfully restraining 'any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits.' 'Wrongful restraint' has in its turn been defined as voluntarily obstructing any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed.

These offences are serious inasmuch as they violate the personal liberty of the individual citizen. The slightest unlawful obstruction to the liberty of a subject to go *when* and *where* he likes to go, provided he does so in a lawful manner, cannot be justified. Persuasion, however, is not obstruction. The police restrain and obstruct persons but such action is not wrongful except when it is clearly *mala fide*.

A graduated punishment from simple imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees or both for wronful restraint to imprisonment of either description for a term which may extend to three years and also liability to fine in a case where the wrongful confinement extends to ten days or more, has been provided in separate sections. This treatment would seem unnecessary and too detailed. The question what should be the strating point for this calculation is nowhere stated in the Code. Illegal confinement is a serious offence and every case must be judged on its own merits. By providing separately for cases for three or more days or ten or more days the Code has been open to further questions like : What then for

20 or more days, 30 or more days, etc. ? The law cannot be so minutely detailed when the question of degree matters.

The Code however, has further detailed wrongful confinement when done with various motives and in various ways. Thus wrongful confinment for the purpose of extorting property or constrain to do an illegal act, of extorting confession, such confinement in secret, etc., have also been separately provided for. It is difficult to justify such specifications because in many cases specific offences may be combined in trial and in many others, the lesser offence is not counted at all and that for obvious reasons. A dacoity, for example, involves house-trespass, house-breaking, assault, intimidation, hurt, theft, extortion, etc., but the offence of *dacoity* is punishable rigorously enough.

Use of Criminal Force and Assault are next dealt with. These two are very wide in their implications so far as the Code goes and are even at variance with what is popularly meant by them. Assault popularly indicates beating but beating is causing hurt in the Code. The Law Commissioners found great difficulty in defining 'Assault' and finally did so thus :

> Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
>
> ....
>
> Illustrations
>
> (a) A shakes his fist at Z, intending or knowing it likely that he may thereby cause Z to belive that A is about to strike Z. A has committed an assault.
>
> ....

'Assault' is thus distinct from 'hurt' and is nothing more than a threat of violence exhibiting an intention to use criminal force, and the present ability and intention to carry the threat into execution.

A mere assault case hardly comes up before Court as, in many instances, such a case is covered by the general exception in section 95 which excludes acts causing or intended to cause such slight harm that no person of ordinary sense and temper would complain of such harm.

Apart from laying punishments for assault and use of criminal force, the Code proceeds to provide against such cases when coupled with such intents or purposes as to deter a public servant from discharge of his duty, such cases on a woman with intent to outrage her modesty, on any person with intent to dishonour, etc., etc.

Cases of outraging modesty of women are of frequent occurrence and have to be put down with firmness, more so in view of the obvious helplessness of Indian women. This provision however, has given unscrupulous women a large opportunity to lodge false cases without the stigma of admitting having been ravished.

Kidnapping, abduction, etc., are next dealt with. Kidnapping literally means child-stealing. It thence came to mean the forcible stealing of a human being regardless of sex or age. These terms have, however, been used in special senses, kidnapping meaning taking or enticing of a minor male under fourteen years of age, a female under sixteen, and any person of unsound mind, from lawful guardianship, and conveying any person beyond the limits of British India. A minor can, however, be kidnapped both from lawful guardianship and British India.

Sir Hari Singh Gour sums this up thus :

> (i) The section has no application to minors other than those who are in custody of a lawful guardian ; (ii) Such guardian may be either natural, legally appointed or a testamentary guardian, or one who has been entrusted with the protection maintenance or care of the minor by such a guardian ; (iii) The accused must take or entice from his "keeping" (iv) There can be no taking where the accused merely receives a minor after he has left the protection of the guardian ; (v) The fact that the minor is in charge of the temporary guardian, e.g., the schoolmaster or employer, does not deprive the primary guardian of his control ; but in such a case the control of another guardian is superadded and from whose custody the taking of a minor entails the same

penalties But such guardian has only limited powers and cannot consent to acts inconsistent with his duty Lastly, the section extends no protection to self constituted guardians, or to waifs and strays in respect of whom no offence under this section can be committed.

'Abduction' is committed by one who 'by force compels, or by any deceitful means induces any person to go from any place' There may be abduction without kidnapping and kidnapping without abduction.

The punishment for kidnapping extends to imprisonment for a term of seven years. Kidnapping or abducting in order to murder, secretly and wrongfully to confine person, doing so to a woman to compel her marriage or that she may be forced or seduced to illicit intercourse etc, etc, in various ramifications have, again, been separately provided for and in many cases unnecessarily so. What is really the utility of naming a few out of the innumerable permutations and combinations of motive, purpose, ways and means of or in which a particular offence could be committed ?

Kidnapping and abduction are offences fairly prevalent in India. Most of such cases relate to minor girls or other women, the motive being compelling marriage or forcing or seducing to illicit intercourse. These are very heinous offences and public opinion is very strong against them. The offences are all the more heinous because of the notorious helplessness of Indian women.

The sort of kidnapping prevalent in the United States of America, viz., of children from parents with intent to extort ransom, is rarely to be met with in India. The most sensational case there in recent years has been the well known case of the baby, Lindbergh, in which Hauptmann was concerned. The latest case we have come across is one in which a young truck driver, Franklin Pierce McCall, (21) was tried and sentenced to electrocution, (May—June, 1938), for kidnapping James Cash from his parent's flat in Princeton. The father was an oil dealer. The body of the boy was found one week later in a mangrove swamp. The police recovered the £ 2,000 paid as ransom by the father of the boy.

Slavery, a time-honoured institution but all the same a veritable curse on humanity, has been prohibited. All dealing in slaves has been forbidden, making it a serious offence not only to carry or convey them but also to keep or retain them

Slavery can loosely be described as an old economic institution consisting in the utilization of forced labour without or with nominal pay The ancient nations of almost all countries recognized the status or rather the want of status of a slave. The institution originated with the conquests by generals who spared the lives of their prisoners and made them slaves. The vanquished were entirely at the mercy of the conqueror.

The institution was recognized amongst the Hindus Christianity did not forbid slavery, but commended manumission, a practice which went a long way towards relieving the lot of the slaves Islam also stressed the practice of manumission as of high virtue and in many ways further improved their lot Slaves were allowed to marry freely and even princesses were given in marriage to them The 'slave dynasty' of kings will remain a standing tribute to Islam.

It, however, took civilized society a long time to face the evils of slavery in their entirety, despite all its skill in clothing its sentiments in articulate language. By the twelfth century the enslavement of Europeans in Europe had almost disappeared. After the discovery of the New World, negro slavery was established in the tropical or semitropical colonies. The European conscience was being gradually aroused to a sense of the injustice of slavery and public opinion stiffened against it from after 1650. The Emancipation Act, 1833, made for the release of all slaves in the British Empire by 1840. Slavery was extinguished in the French Colonies in 1848, in Holland in 1863, and in the U. S. A. in 1865. The name of Abraham Lincoln will be remembered in connection with the emancipation of the slaves in America.

Slavery was in vogue in India before the adoption of the Indian Penal Code and continued to linger many years afterwards. At present, however, there is very little occasion for use of the provisions made.

Buying minors for purposes of prostitution has been met with a provision and a heavy punishment has been laid down. This is to safeguard minors of tender age without much discrimination, against being exploited.

It is not intended to suppress traffic in immorality for beyond the age 18 criminal law withdraws its control and leaves the parties the freedom of contract and action. The provision for minors is very wise. The sections as amended have been desirably widened and made more precise.

The offence of 'rape' has been defined by Lord Hale as 'carnal knowledge of a woman against her will.' This is very vague Loosely speaking, rape is the forcible ravishment of a woman. It has been considered a very heinous offence and it owes its enormity to the defilement and dishonour it reflects on the whole family.

Uunder the Jewish law it was met by the extreme penalty if the damsel was betrothed to another man, otherwise she was forcibly married to her ravisher with conditions all favourable to her. Under the Hindu law, punishment was graduated according to the relative rank of the parties and it varied from death to a small fine. The Brahmin was naturally preferentially treated. Islam laid down the extreme penalty of death but the evidence required was so stringent that the penalty was rarely inflicted except in a few cases on confession. Rape was a capital crime under the civil law under which, moreover, the consent of the woman was held to be immaterial. Prostitutes, however, were excepted and were held incapable of any assault of this kind. The punishment under the English law extends to penal servitude for life.

The offences allied to rape are indecent assault which we have already discussed, attempted rape, adultery, and seduction of a married woman, which have been provided for separately. The definition of rape in the Indian Penal Code is detailed enough :

> A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :
>
> First —Against her will.
>
> Secondly.—Without her consent.
>
> Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.
>
> Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
>
> Fifthly.—With or without her consent, when she is under fourteen years of age
>
> Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.
>
> Exception.—Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.

A woman raped while asleep is deemed to have been ravished against her will. When she is in a state of insensibility and therefore unable to exercise her judgement, there can be no consent. The consent must be a free consent to operate negatively. A consent is not valid when given by a girl under fourteen years.

The exception is necessary because of the prevalence of child marriage in India (now restrained by the Sarda Act) and the danger to life of a child in cases where the husband ravishes her on the mere excuse that she is her married wife. This is reminiscent of the case of Huree Mohan Mythee tried at the Calcutta Session of 1890 in which the accused had caused the death of his girl wife, aged 11 years and 3 months, by having forcible connection with her. The age-limit previous to that was 10 years. The provision, however, very rarely comes into use and in many cases, owing to the precocity of girls in India, there hardly arises any cause for complaint.

The sexual offences have the Sex Instinct in the background. The urge is universal. In the animal kingdom, normal sexual gratification is free and voluntary. Economic and social considerations make it impossible for human beings in our civilization to marry as soon as they have become sexually mature. Thus. 'the problem of Sexual Conduct, between the age of ripeness for mating and the age at which marriage is possible, is one of the major problems of our civilization.'

The offence of rape and the like are not, however, entirely due to those who thus suffer from a want of channel for natural sex-gratification. There are oversexed people who suffer from insatiable lust and against whom society should protect its members. There are other brutes who, in spite of legal channels of normal gratification being available to them, take sporting chances with the life and honour of innocent women. The parallel is provided by criminals who commit crimes to satisfy wants and those who do so to satisfy fancied demands. The latter class is the more reprehensible in both the cases, although society should go on punishing the former also. It should at the same time look for a solution of the problem itself

Cases of rape are frequently come across in India and some are indeed ghastly in their heinousness. The apparent helplessness of Indian women has a great deal to do with this class of offences. Public opinion is, however, very stiff aginst such crimes.

There are cases of false accusation reported occasionally. A court is warned not to believe the uncorroborated evidence of the woman. A jury will seldom convict unless the girl is injured as they hold very shrewdly that if the girl is really unwilling she will resist till she suffers injuries. A girl caught in an illicit intrigue will often lodge a false case for rape against her lover to clear her own character.

Transportation for life or imprisonment for a term extending to ten years is the maximum punishment that can be awarded in cases of rape. The provisions are adequate. Whipping in addition has also been permitted by the Whipping Act of 1909 and is actually ordered in exceptionally heinous cases.

The last section in this chapter relates to unnatural offences.

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisoment of either description for a term which may extend to ten years, and shall also be liable to fine.

The section deals with the offences of sodomy, buggery, and bestiality for which the offenders were at one time liable to be burnt. Since Sodom and Gomorrah attained their traditional notoriety, man has looked upon sodomy as a ghastly offence. Public opinion has also been harsh in respect of the other sorts of unnatural offences.

These offences constitute a big chapter in sex literature and sexology has much to say on the extent, nature, culpability, treatment, etc., of such 'perversions, inversions, and deviations'. The science of sex has much sane counsel to impart in these repects and I have discussed matters in general in my work on Sex. The problem I have mentioned, viz, of sexual conduct between the age of ripeness for mating and the age at which marriage is possible, has much to do with the topic under discussion. Doctors are far more liberal in their attitude towards these forms of offences. They are notoriously widespread in society although very few instances come to light. They are by no means confined to any age or nationality.

It is curiously anomalous that the punishment for this class of offences has been identically equal to that for 'rape' which should be infintely more serious an offence. This is only reminiscent of the sloppy sentimentality of the age.

The section under consideration makes no allowance for consent. The party consenting is equally liable as an abettor. As such, its testimony requires corroboration.

It is doubtful if the law should intervene in cases of volunatry unnatural gratification where the parties concerned are major, however much society can condemn such action. Such immorality should be got at by other means than such penal legislation which would remain a dead-letter. The principle we have discussed and which is daily gaining ground, viz, 'your body is yours' will stand in the way of the state. Unless the offence is committed in a public place in which case it would constitute a nuisance. the parties concerned do not injure society. Cases of minors come under acts without consent as their consent is not considered valid. Bestiality should only be punished under such provisions as against cruelty to animals because they are not governed by human social conventions. The considerations of the health of the offender in all these cases come within the purview of medical advice rather than of law.

Offences Against Property.

The offences under this head comprise adverse attacks upon private rights in property. Violations of such rights, however, are considered civil injuries. It is the more flagrant and violent attacks that are considered fit for speedy and deterrent action by the criminal court. It is difficult to draw a sharp line between the provinces of the two branches of law, civil and criminal. There is a constant interchange of sphere between these two branches, owing to changes in social conditions and public opinion. For example, it was customary formerly to imprison debtors as if they were criminals.

The evolution of property has a long history. Unlike other members of the animal kingdom, man began to think of the future and to worry that it would not do to consume what is available, all of it. He recognized the recurring biological urge for food. The one was as certain as the availability of the other was a matter of chance. Quite naturally thus, he began to *consume* and *keep* at the same time. This marked the beginning of the idea of property.

The earlist 'true men' were hunters. Their chief pursuit was the wild horse, the bison, the mammoth and the like. They had no cooking implements ; their cookery must have been rudimentary or non-existent. They do not seem to have erected any buildings.

The beginnings of cultivation and the settlement by land were then to follow though the transition was very slow, judging by modern standards. As Wells puts it, man 'felt his way to effectual practice through a multitude of trials and misconceptions, with fantastic and unnecessary elaborations and false interpretations at every turn. Somewhere in the mediterranean region, wheat grew wild ; and man may have learned to pound and then grind its seed for food long before he learned to sow. He reaped before he sowed.'

Age by age, home, provisions, implements, animal accessories and other artistic possessions came to be gathered and owned. A sort of ownership grew and as children constituted the dearest human group, possessions came to be bequeathed to posterity.

Different religions and systems divide property to heirs differently. Rights of property are not so easily ascertainable. The Law Commissioners observed :

> It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights ; and this we cannot have while the law respecting those rights is either obscure or unsettled. As the present state of the civil law causes perplexity to the legislator in framing the Penal Code, so it will occasionally cause perplexity to the judges in administering that Code. If it be a matter of doubt what things are the subjects of a certain right, in whom that right resides, and to what that right extends, it must also be a matter of doubt whether that right has or has not been violated. For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away : here if the law of civil rights grants the property of such birds to any person who can catch them, A, has not, by killing them and carrying them away, invaded Z's right of property.......As the substantive law varies, the penal law, which is added as a guard to the substantive civil law, must vary also.

The forms of violations of the rights of property made punishable are :

(1) Theft.
(2) Extortion.
(3) Robbery and Dacoity.
(4) Criminal misappropriation of property.
(5) Criminal breach of trust.
(6) Receiving stolen property.
(7) Cheating.

(8) Fraudulent deed and disposition of property.
(9) Mischief
(10) Criminal trespass.

Possession being the common element in this class of offences, the only distinguishing feature the above sub-classes bear is, in the intention and the manner of its execution. Essentially there is not much difference among them. Theft, extortion, and cheating for example, have the same purpose in view ; what is different is the modus operandi in each case In theft the deprivation of property takes place by its removal, in extortion, by forcible acquisition, and in cheating, by guile. These plans of attack may again be used in combination, Thus robbery is the aggravated form of theft or extortion when the victim is put in immediate fear of death, hurt , etc. Dacoity is an aggravated form of robbery. the attack being made by five or more persons

We shall now review the various forms of this class of crime in the method we are following leaving aside common and unimportant features.

Theft is perhaps the commonest form of crime. Historically it originated as soon as private property came to evolve Property has ever been unequally possessed and the 'haves' and 'have nots' have lived side by side. 'Thou shalt not steal' is a commandment which has been in one form or another laid down by all religions and other systems although in Manu Samhita there is a rule that a Brahmin suffering from extreme hunger or whose family is starving may take as much grain as for a meal from rice fields or granaries In Islam, cutting of the hands of a thief is enjoined, such provision being only reminiscent of old ideas which persisted in worse forms till very lately, as we have seen. The reader is referred to the introductory chapter where the rigour of law in medieval England was delineated.

Stealing is committed not only from necessity but also cupidity. The former is derived from the instinctive urge to self-preservation as when a man cannot by any other means obtain food or other necessities. Cupidity is excited by contrast of fortune. When the rich and the poor live side by side, an amount of jealousy is generated by such contrast of fortune. Pilfering is common with children and minors who often steal from the parents' cash-boxes. Purloiners often regard theft of small articles as causing only a negligible discomfort to its owner. On this score, things of trifling value are stolen by workmen in factories and workshops. Domestic servants are also addicted to such petty pilfering.

Theft, as a form of crime, is perhaps the most widely-prevalent crime in the world. No country is immune from it nor can one be. It has, in many countries, however, been greatly mitigated by combined efforts of an alert police and a careful public

The Indian Penal Code has defined the offence thus :

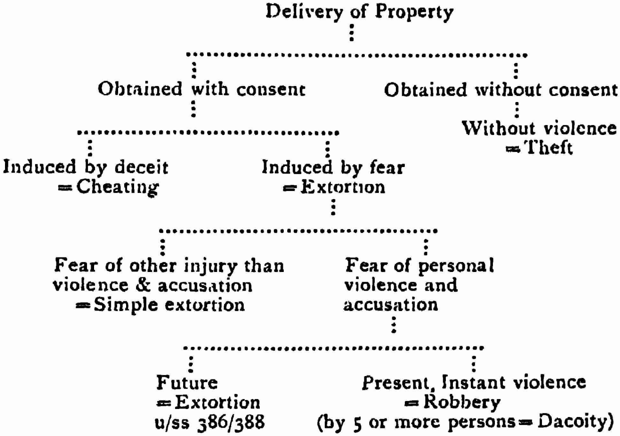
> Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

This definition is followed by explanations and a large number of illustrations. Larceny in English law is a much narrower crime than theft as defined here.

The various terms of this definition have wide connotations. Sir Hari Singh Gour has discussed them in great detail in his Penal Law of India.

Theft is punishable with imprisonment for a term which may extend to three years, or with fine, or with both. This is adequate in view of the fact that the aggravated forms have been separately dealt with. Theft in dwelling house ; by clerk or servant of property in possession of master ; after preparation made for causing death, hurt, or restraint, has been associated with an increasing punishment. These detailed provisions are hardly necessary as they do not by any means exhaust all the variations that could be conceived.

The relation of other forms with theft can be grasped at a glance from the following table adapted from Sir Hari Singh Gour.


Delivery of Property
Obtained with consent
Obtained without consent
Without violence =Theft
Induced by deceit =Cheating
Induced by fear =Extortion
Fear of other injury than violence & accusation =Simple extortion
Fear of personal violence and accusation
Future =Extortion u/ss 386/388
Present, Instant violence =Robbery
(by 5 or more persons=Dacoity)

Extortion has next been dealt with and the nature of this form of crime will appear from the table just given. Extortion is committed by the stronger person, the victim succumbing out of fear, on the particular occasion. It has ever been the method of the stronger to exploit the weaker, the strength consisting in physical, economic, political or other power. More powerful states, kings, or generals coercing the weaker ones to submission or payment of tributes provide example of the major cases of extortion. Officers in power extorting money on various threats, child-kidnappers in America with a view to extort ransom, black-mailers by threatening exposure, etc , etc., provide other examples. A more heinous form of extortion is robbery which we shall presently discuss.

Like theft this crime has its roots in necessity and cupidity. Helplessness of the victim and his timidity, etc., are circumstances that invite offenders to commit this form of crime.

Simple extortion and extortion combined in various ways and extortion for various purposes have been separately provided against with punishments, as elsewhere, rising in severity as the aggravating circumstances rise.

The offences dealt with next are robbery and dacoity. Dacoity is nothing but gang-robbery, the former appellation denoting robbery or attempted robbery by five or more persons. The arbitrary and artificial division can rightly be objected to on the ground that the distinction is purely one of degree and if we once recognize this for such a division, we may be called upon to differentiate an offence of this nature by, say, 20 or 30 and more persons.

We shall devote some space to discussing these two forms of crime (in nature one) as they constitute a grave menace to people in India, especially in the wide prevalence of house-dacoities in the interior.

Loosely stated, robbery (and necessarily dacoity) may be distinguished from theft and extortion by the presence of force and imminent fear of violence. Robbery is thus aggravated theft or aggravated extortion. In fact robbery and these offences are so allied that there may sometimes occur a difficulty to say whether an offence is one or the other. The Law Commissioners wrote :

> There can be no case of robbery which does not fall within the definition of either theft or of extortion ; but in practice it will perpetually be a matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him, unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took, without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion ; that the rupees in Z's

girdle may have been obtained by theft, and those in his turban by *extortion*.

This feature will be more apparent when we describe the nature of a house-dacoity. The dacoits break open boxes and safes and remove what is within and simultaneously in many cases make the owner disclose what further he has and sometimes make him deliver things himself.

The affinity of robbery with other forms of crime involving delivery of property will be aparent at a glance from the table showing connections I have already quoted.

Historically, robbery has been co-existent with theft and we have already indicated how theft originated as soon as private property evolved. In major proportions, it has, again, like extortion, assumed the shape of one state falling upon another with a view to plunder. Instances, however, have not been infrequent in recent or even present history, of such wanton crimes. In minor proportions, it assumed the shape of attacking individual citizen or citizens and plundering properties.

Robbery is to be found all over the world. In America we hear of bank-robberies and hold-ups. In the year 1931, robbery with violence provided as many cases in the Metropolitan district as in the whole of the rest of England and Wales.

Robbery in India has been present for all the time. Within comparatively recent history, the *Marhattas*, *Pindaris* and *Thugs* have in their turns committed what may be termed robbery on a large scale. The Marhattas became troublesome with the decline of the Muhammadan rule. They used to invade a territory, demand *chouth*, a quarter of the produce of the land, as a tribute, and on refusal, to plunder villages indiscriminately. They came in conflict with the English first in 1775, and subsequently in a series of conflicts they were gradually subdued.

The Pindaris were mostly Muhammadans and were heard of as followers of the Maratha armies in the

Deccan about the year 1700. They were granted lands by Holkar and Scindia in the country north of the Nerbudda They were allowed to pillage anywhere outside the territories of their masters, these latter collecting a good share of the loot for themselves. They were usually all horsemen, the servants and camp followers being mounted on country ponies, They travelled unencumbered. They used to attack at great speed and loot the country of all cattle or property and destroy what they could not take. Back to their places, they lived a life of debauchery and excess until the diminishing resources again sent them out for new scenes of rapine. They were met by a military campaign and were forced to disperse into small bands. The leader Chitu was driven from here to there till he fled to the depth of the jungles and was devoured by a tiger (1819). Within a few years of their suppression the Pindaris almost disappeared.

The *Thugs* were a society of hereditary murderers who strangled and robbed their victims. They came to the notice of the Government in 1799 and later became so prominent that special sections were added to the Indian Penal Code for suppressing Thuggee. They ran :

> Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery, or child stealing by means of or accompanied with murder is a thug.
>
> Whoever is a thug, shall be punished with transportation for life, and shall also be liable to fine.

These sections however, were not much used as other executive action succeeded in suppressing this form of crime. A special department was formed, and officers and agents were employed all over India. Captain Sleeman's name will be remembered in connection with these successful operations on the part of the Government against the menace which soon passed away into history.

The Thugs, or Pahnsigars, were composed of mixed castes all worshipping the goddess Kali. Their method of murder was invariably by strangulation by slipping the noose over the victim's head. Sometimes they used a *gamchha* (piece of cloth) and sometimes they poisoned their victims with "dhatura". Soldiers proceeding home on leave were often missed and the Commander-in-chief in 1810 had to issue a warning against careless travelling.

By October 1835, as many as 1562 Thugs were arrested ; 382 of them were executed and the rest transported and otherwise disposed of The Thuggee and Dacoity Department of the Government of India was abolished in 1904 as the thugs had been finally wiped out. Interesting accounts of this menace can be read in "Confessions of a Thug" by Taylor, "A Popular Account of the Thugs and Dacoits, the Hereditary Garotters and Gang-robbers in India" by Hutton, "Thug : a million murders" a description of the suppression of thugee by Sir Sleeman by J. S. Sleeman, and other literature available on the subject.

Apart from these formidable classes that have now died down, there are a few criminal classes, the hereditary tribes we have already described in Appendix A, who are commonly addicted to the commission of robberies and dacoities in various ways peculiar to them. They are Bagdis, Banfars, Bhumijes, Bhurs, Chhoto Bhagiya Muchis, Gains, Lodhas, Maghiya Doms, etc., etc., as described elsewhere. I have already detailed the nature of these criminal classes their peculiar *modus operandi* and the extent of their criminality.

Dacoity attained serious dimensions in Bombay, the United Provinces and the Central Provinces in 1923-24. Towards the end of 1923, a gallant piece of work of the United Provinces police led to capture of a Bhantu gang which ·had for long terrorized certain districts. This piece of work was appreciated by all, the villagers cheering and garlanding the police in crowds.

Even more extensive operations than in the above case had to be undertaken in the same year against a desperate gang led by one Mirkhan in Gujrat. The depredations of this gang were so intolerable that a special force with 8 motor cars and 2 Lewis guns was finally equipped. The gang was run to earth, members taking up position upon a steep hill which had to be stormed. Two were shot dead. Among things seized were armaments, booty, horses, ornaments, etc.

The real menace now, however, lies in the sporadic cases of dacoity committed in the interior by isolated gangs ever forming and reforming. Members combine freely, separate, and reunite as clouds do

Dacoity, in this respect, constitutes a serious and difficult problem in India Bands of depredators composed commonly of men of bad livelihood, combine to assault and rob, in circumstances of heightened terror, wealthy villagers or helpless travellers Having committed the crime, they disperse to enjoy their booty, only to rally once more when another opportunity offers itself. They look forward to the dark nights especially for their nefarious activities. Favoured by the difficulty of communications, the immense areas, and the multitudinous jurisdictions which characterize many parts of the country, they frequently escape detection. Two or three successful operations of the nature usually gain for the leader the reputation of a local Robin Hood with a halo of a perverse glory. They carry on, so to say, a sort of guerilla warfare avoiding open conflicts with the forces of law and order as far as possible.

I quote below for the information of foreign readers a real and typical case. The first Information Report has names, etc , omitted.

One ..of Islampur, police-station Begamganj, district Noakhali, Bengal, aged about 58, appeared at the police station accompanied by the *mahalla chowkidar* and President, Union Board, and produced a one-cubit long wooden roller with an inscription on it and lodged the following information :

> Last night at about 1-30 a.m. some 20/25 dacoits, armed with *lathis*, electric torches, and rollers etc., raided my house. They assaulted me and other inmates and ransacked the following properties (list given below) The dacoits, on approach, asked me to get up from bed and light a lamp and to

open the door on the pretence that police "JAMADAR BABU" had come on rounds. There was already a light in my house and I was awake. I asked them why I should open the door at this late hour of the night. The dacoits said, "To sign the round book". I then enquired of the *mahalla chowkidar* but they told me that he was coming behind. On this I opened the door, when simultaneously 2 dacoits pushed me down, tied me with my wearing cloth and threatened me to keep silent. They entered inside my house followed by 4 other dacoits. I raised an alarm which roused my wife, daughter, and daughter-in-law, who were sleeping in the hut. They also raised a hue and cry, when the dacoits began assaulting them and threatened us to keep quiet. 2 of them (dacoits) came to me, demanded keys, cash, and other valuables but I said, "I have nothing". On this they attacked me in an assaulting mood. One of them dealt a *lathi* blow on my son's head causing an injury. They also inflicted several injuries on the person of my wife. Some of the dacoits broke open the wooden box kept under my cot and looted Rs. 8400/- in 10 rupee G C notes, Rs. 100/- in 5-rupee G C notes and Rs. 900/- in silver coins therefrom. Of the dacoits who entered inside the house, I and my son could recognize × × and × ×. This × × had a roller with him which he left on my cot at the time of retreat and I produce the same before you. The dacoits kept guards over other houses of the sheds and prevented the inmates from coming out. The dacoits were in my house for about half an hour and with the advance of people from all directions, they decamped with the booty. I did not enquire whether any one else could recognize any of the dacoits. The dacoits who entered inside my house were 20/25 in number and had *pugrees* on, two of them had khaki shorts and others had *lungis* on in a *malkocha* fashion. × × and × × had also *lungis* on. The dacoits were between 25 to 30 years of age and had half shirts on. They were armed with lathis and and rollers and had torches with them. I myself and other inmates of the house would be able to recognize the dacoits who entered inside my house, if we see them again. Amongst them, one was of black complexion and fairly tall. This man first entered into my house and tied me up. The dacoits were both Hindus and Musalmans. At the time of retreat, one amongst them called another as × ×. Immediately after the retreat of the dacoits, neighbours × ×, × × and others came to my house and I told them of the recognition of × × and × ×. This morning I informed the *mahalla cowkidar* and president Union Board, of the occurrence and told them also of the recognition of × × and × ×. This is my *ejahar*. Being read over to me, I admit it to be correctly written and put my signature.......

The difficulty in detection in such cases arises from the nature of the crime itself and the circumstances in which it is usually committed. In the first place, the criminals ordinarily take the utmost care to conceal their identity, in many cases assuming disguises and in most, using powder and masks. They scarcely leave any trace behind. In the second place, the property carried away is difficult to identify, hard cash being preferred and ornaments taken being melted down. In the third place, the crime is associated with so much terror that complainants and villagers seldom come forward to give any clue even when they can and even give wrong clues so that the real culprits may not be antagonized to inflict further reprisals There are great many other things that baffle the police.

Dacoity constitutes a serious problem in India. On the preventive side, the villagers themselves will have to be more self-reliant, defensively armed, and effectively organized to turn out on an agreed 'Alarm Scheme'. The very helplessness of the villagers encourages this form of crime and burglars come eventually to discover that is infinitely more paying to arrange a midnight *coup* than a *prowl* in the dark. In the former case they can count upon some valuables being squeezed out of the frightened inmates whereas in the latter they have more often to come back empty-handed.

In spite of all in favour of the dacoits, the police *are* able in some cases to discover the gang and connect it with the crime. In the dash some clues are left and these lead to the culprits. The Indian Penal Code has adequately provided for their punishment.

In the order of their gravity, robbery and dacoity have been met with an increasing scale of punishment.

Robbery :—(1) Attempt. Upto seven years ; also fine.
(2) Simple robbery. ... ten years ; do.
(3) Robbery armed with deadly weapons. Minimum seven years.
(4) Robbery with hurt. Transportation for life ; ten years ; fine.
(5) Robbery with grievous hurt or death. Minimum seven years.

Robbery is undoubtedly a very heinous offence and so the penal provisions in items (1) and (2) have been adequate. Item No (1) could easily have been left to be covered by the general section providing for 'attempts' (sec. 511) A matter of 2 years. The maximum is always too high. As for items (3), (4) and (5), there was hardly any need to proceed to specify such circumstances as one can never catalogue them properly without making the code unduly elaborate. Besides, there is little sense in making the same provision for (3) and (5) while (4) could easily be covered by (2).

These criticisms will apply more or less to the various classes of dacoity provided against, dacoity itself being only an aggravated form of robbery and, curiously enough, only number of persons, (a mere number !), differentiating it so artificially. Four persons can commit a robbery in circumstances of atrocity far greater than 10 persons in any other :

Dacoity :—(1) Preparation. Upto ten years ; fine,
(2) Joining dacoits. Transportation for (Habitual gang) life ; ten years ; fine.
(3) Assembling for dacoity. Seven years ; fine.
(4) Simple dacoity. As in (2).
(5) Dacoity armed with deadly weapons. Minimum seven years.
(6) Dacoity with grievous hurt. Minimum seven years.
(7) Dacoity with murder. Death ; transportation for life ; ten years ; fine.

I refrain from detailed criticism in view of my remarks above. The reader can make his own critical appreciation by reasoning on similar lines.

The other specific offences noticed in this chapter are :

(1) Criminal Misappropriation.
(2) Criminal Breach of Trust.
(3) Receiving of Stolen property.
(4) Cheating.
(5) Fraudulent Deeds.
(6) Mischief.
and (7) Criminal Trespass.

I shall refrain from any detailed discussion as the nature of most of these offences will be clearly understood. A running survey with only the salient features mentioned will suffice.

(1) Criminal misappropriation is the dishonest misappropriation or conversion to one's own use of any movable property. This is a new offence carved out of theft. Dishonest intention has to come in although the property may have been originally come by honestly. Cashiers, clerks, treasurers, bank officers, etc., etc., are mostly involved in this form of crime. Want often goads and cupidity lures them but it so happens in many cases that they hope to return and make good the money or property before they are detected but ultimately fail to do so. This is an extremely prevalent form of crime, especially in the business world. Lack of proper supervision and strict audit is a factor encouraging it.

(2) Criminal breach of trust is an offence allied to the one just described. The misappropriation here is committed by a trustee. The gravity lies in the confidence that is abused. The essential ingredients are (i) a trust, and (ii) its dishonest breach. This latter ingredient will be fulfilled even if one does not misappropriate or convert to one's own use such property but only disposes of it 'in violation of any direction of law prescribing the mode in which such trust is to be discharged'. Civil breaches of contract have to be differentiated from criminal breaches of trust. Dishonesty is the main factor differentiating the two classes. Simple criminal breach of trust has been made punishable with imprisonment which may extend to three years or with fine or with both, whereas, certain aggravated forms such as those by carriers, public servants, bankers, etc., may be punished with imprisonment for upto ten years. Mostly the same class of persons are involved in this class of offences as in criminal misappropriation.

(3) The mere possession of stolen property cannot be criminal as in many cases it may be retained

honestly. Thieving and other forms of offences against property obtain encouragement from the facility the offenders enjoy in disposing of or depositing safely their ill-gotten goods. This is a menace the enormity of which can only be felt. Little is precisely known of it because of the stubborn secrecy that is observed by all concerned.

The receivers constitute another baffling problem. Statistics will show the enormous value of properties stolen every year and the comparatively small percentage of those recovered. Among valuables stolen are gold, jewellery, bales of cloth, clothes, bicycles, watches, etc. In a very small number of cases properties may be traced in possession of the thieves themselves or of their near relatives but in the vast majority of cases, they are liquidated through the receivers. The criminals arrested will sometimes confess, betray their colleagues, but very rarely, if ever, do they speak of the receivers behind. The receivers are often influential people and very often goldsmiths. Ornaments are readily melted and converted into lump gold or silver. The actual thieves and robbers often get a poor share and instances are not wanting where out of properties worth thousands of rupees, they got only a few rupees in their individual shares. The rest goes to the receivers. The latter are, however, in some cases, known to be supporting the families of the thieves when they are in jail.

Sometimes receivers are arrested on suspicion but it becomes so very difficult to prove guilty knowledge, control or keep, and to identify properties satisfactorily. The police must prove the larceny or fraud ; then they must prove the possession, actual or constructive, and finally they must prove guilty knowledge—all of these being essential ingredients.

(4) Cheating was defined by Hawkins as consisting of 'deceitful practices in defrauding or endeavouring to defraud another of his known right by means of some artiful device contrary to the plain rules of common

honesty'. The framers made the following interesting observations when drafting a definition of cheating for the Indian Penal Code :

> There is no offence in the Code with which we have found it so difficult to deal as the offence of cheating. It is evident that the practising of intentional deceit for purposes of gain ought not always to be punished. It will hardly be disputed that a person who defrauds a banker by presenting a forged cheque, or who sells ornaments of paste as diamonds, may with propriety be made liable to severe penalties. On the other hand, to punish every defendant who obtains pecuniary favours by false pretensions of attachment to a patron ; every legacy-hunter who obtains a bequest by cajoling a rich testator ; every debtor who moves the compassion of his creditors by overcharged pictures of his misery ; every practitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion, would be highly inexpedient. In fact, if all the misrepresentations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law......... A very large part of the ordinary business of life is conducted all over the world, and nowhere more than in India, by means of a conflict of skill, in the course of which deception to a certain extent perpetually takes place

Cheating has thus been defined :

> Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit, if he were not so deceived to do or omit, if he were not so deceived, and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property is said to "cheat".
>
> Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

The definition is indeed very wide and has rightly been illustrated by various examples in the Code itself. The offence is thus committed by the wrongful obtaining of consent. The extortioner obtains it by intimidation and the cheat by deceit. Sir Hari Singh Gour has a good deal to say in annotating this offence. The gist is, however, essily comprehensible.

Cheating by personation is a variation of the main offence although it has been specially defined in the Code. There are innumerable variations in which cheating is in actual fact practised.

It has ever been the weapon of the shrewd and the cunning. In many cases, the stupidity of the victim is an inviting factor and in many others, the offenders devise ingenious methods to outstrip their victims' intelligence. Credulity of the Indian public is greatly exploited in these ways.

The reader is referred to the chapter on the Criminal Classes, (Appendix A), many of whom have their own ways of swindling people. There is need for educating the Indian public against such swindlers and one of the means is undoubtedly dissemination of knowledge as to how these culprits operate. Many of the tricks I have mentioned will make fascinating study which will repay the unwary and the careless.

The offence is extremely prevalent although in many cases people cheated bear up their losses for fear of being ridiculed. Some of the well-known methods of swindling are :

(i) Dhatura-poisoning
(ii) Railway-Ticket-fraud.
(iii) Bogus ticket-collecting and blackmailing.
(iv) Doubling Trick
(v) Lost Relation Trick.
(vi) False Personation.
(vii) Bogus Marriage Negotiating.
(viii) Mystic Healing and Love Doctoring.
(ix) Bogus Telegraph Money Order Trick.
(x) False Guide Trick. (see Appendix A).

(5) Fraudulent Deeds, (6) Mischief and (7) Criminal Trespass hardly call for any specific comments. The first relate to deeds intended to defraud creditors, etc. Mischief includes a wide set of acts as will be evident from the definition and illustrations. Burning a valuable property, introducing water into an ice-box, throwing a ring into the river, casting a ship away having insured it, entering cattle on land, etc., etc., when done

maliciously are examples of mischief Here, again, the Code has multiplied sections by providing specifically against many forms of mischief. We have criticized this over-elaboration in many connections.

'Criminal trespass' has also been very widely conceived and comprehensively presented. It extends from temporary entry into a house or land to annoy the owner or occupant to breaking of house at night to commit various offences such as theft, robbery, murder, etc. The aggravating circumstances relate to :

1. Time of trespass—that by night being an unexpected intrusion into one's privacy and causing a greater alarm.

2 Purpose of the trespass—as that for committing various serious offences against person and property.

3. Nature of the property—trespass into a dwelling house being more serious than on one's field.

'Criminal trespass' has to be differentiated from civil trespass. There must be a criminal intention in the former class

Various ways of trespass have been specifically provided against in the Code, again to almost unnecessary elaboration The most important and the oftenest used section is 457 which combined with 380 (theft) makes up the very widely prevalent offence known as a 'burglary'. A very severe punishment has been laid down, viz, imprisonment for upto fourteen years for this offence. In actual practice, however, the first offenders receive a few months only. A very small proportion of these offences is actually detected and this because of the very elusive nature of the crime. Advanced scientific methods of investigation are needed for better detection of this form of offence

Burglaries constitute a baffling problem in India. Among factors encouraging this form of crime is the vulnerable type of dwelling houses. Mudplinths are easily bored through and mat-walls have holes cut in them. Windows and openings in ceilings are also availed of Reported cases under this head outnumber all other cases and a great many of these go unreported.

As I have said, what is more important in combating this form of crime is improved methods of detection. Preventive actions in the shape of badlivelihood cases, close surveillance and effective patrol by the regular and the rural police and the voluntary 'defence parties', increased carefulness on the part of the house owners, etc., must also be counted. Various scientific anti-burglary devices have also been in use in the West but their costliness will preclude the poor masses of India from deriving benefit from them.

The penal provisions are adequate. The actual sentences awarded by Courts in such cases, however, are mostly inadequate.

This long chapter has much on which the law commissioners could take pride, there being many points of beauty in constructions put to some of the sections which mark an improvement over English Law then obtaining

On the other hand, it suffers from the besetting sin of over-elaboration, arbitrary classification, anomalous provision etc, etc., as I have indicated in the course of my discussion itself. I need not labour the points here over again. A future law commission will have much to recast and revise.

Offences Relating To Documents And To Trade Or Property Marks.

The first offence dealt with under this head is forgery. Forgery originated with the invention of writing. As Sir Hari Singh Gour says, the earliest trace of this offence is to be found in the writings of Bracton, who gives only one instance of it, which he classes as treason. This was the forging of the seals of state. It was later punishable sometimes under the civil and sometimes under the criminal law.

Forgery is an offence at Common law and has been defined to be 'the fraudulent making or alteration of a writing to the prejudice of another man's right.' The simplicity of this definition compares very favourably with the elaborate definite of the Indian Code. The chapter in the Indian Penal Code has defined forgery and making a false document and provided against various forms with a varying scale of punishment.

Forgery was one of the offences punishable with death in England. We know of the case, here in India, in which Nundo Kumar (1705-75) was tried on a charge of forgery (May-June 1775) in Calcutta before Sir Elijah Impey of the Supreme Court The case was tried by Sir Impey with the help of other judges and with a European Jury of 12 and the trial lasted eight days from the 8th. June. The Jury found Nundo Kumar guilty and according to the prevailing law of England, he was sentenced to death. He was executed on the 5th August, 1775.

Simple forgery, now, is not even a cognizable offence. Nor are other aggravated forms of forgery although severe punishment has been provided in those cases. Among these are forgery of record of court or of public register, etc., of valuable security, will, etc., for purposes of cheating, etc.

Falsification of accounts is an offence of importance and section 477 A as added in 1895 provides against it. It relates to clerks officers or servants, and makes the falsification of books and accounts punishable even though there is no evidence to prove misappropriation of any specific sum on any particular occasion.

Many of the sections provided in this chapter, and especially those relating to trade or other marks could be dealt with under cheating or allied heads. Over-elaboration was perhaps considered a virtue !

Counterfeiting currency-notes or bank-notes has been dealt with in this chapter although this might have been treated along with counterfeiting coins or stamps already discussed. This arrangement would have done away with an anomaly that now exists in that enhanced punishment u/s 75 I. P. C can be awarded on subsquent convictions in cases relating to coins and stamps but not to the aggravated form of counterfeiting currency-notes ! Counterfeiting of a note is forgery and the offence might just as well be punished as such. If, however, the value of the note and its worth in the world of business and finance were considered the sections added on this score could have rightly been done along with those dealing with counterfeiting coins and stamps.

I have referred in the Introductory Chapter to a case in which an old man of Mymensingh was surprised by me in the act of counterfeiting ten-rupee notes and to the enormity of the find This was a man who had perfected the skill, working with the commonest tools. It is difficult to trace the actual counterfeiter in many cases as the notes change hands and when detected, they are mostly in the hands of innocent persons duped.

The transactions reprobated are counterfeiting, using, selling, purchasing, receiving and trafficking in such notes. Possession of forged notes, making or possessing instruments or materials for forging or counterfeiting, etc., have also been provided against.

Offences Relating To 'Criminal Breach Of Contract Of Service'

This small chapter made exceptional provisions having no prototype in the criminal law of Europe. The framers argued :

> Some breaches of the contract are very likely to cause evil such as no damages, or only very high damages can repair, and are also very likely to be committed by persons from whom it is exceedingly improbabale that any damage can be obtained. Such breaches of contract are, we conceive, proper subjects for penal legislation.
>
> In England it would be unnecessary to provide a punishment for a stage-coachman who should. however maliciously or dishonestly drive on, leaving behind a passenger whom he is

bound to carry. The evil inflicted is seldom very serious; the country is everywhere well inhabited; the roads are secure. The means of conveyance can easily be obtained, and damages, sufficient to compensate for any inconvenience or expense which may have been suffered, can easily be recovered from the coach proprietors. But the mode of performing journeys and the state of society in this country are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles over uninhabited wastes, and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, these persons should, in a solitary place, set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left.........

The provisions made were against 'breach of contract of service during voyage or journey', 'breach of contract to attend on and supply wants of helpless person' and 'to serve at distant place to which servant is conveyed at master's expense'.

This chapter was almost a 'dead-letter', and naturally so. The palanquin-bearer has a hungry stomach and is not paid off till the occupant has reached the destination. The latter hardly ventures across such jungles unaided. The former has his trade to ply and he cannot indulge in such frolics without affecting his trade. If he does so with a view to extort money, he can be hauled up for that offence. If he does so on grave provocations given by the occupant, the existence of such a provision in the law book of which he has not the faintest idea will by no means deter him. The over-elaboration of provisions can very rightly be mitigated by omitting this chapter altogether and the disuse to which the sections had fallen certainly justified the repeal of sections 490 and 492 effected by the Workmen's Breach of Contract (Repeating) Act of 1925. I share the apprehension of the Framers when they say that they are 'generally apprehensive that by making these petty breaches of contracts offences, we should give not protection to good masters, but means of oppression to bad ones.' Economic factors will regulate such conduct and the poorest classes covered are the least likely to indulge in wanton sports of the nature.

Offences Relating To Marriage.

Marriage is essentially a human institution. Although in the animal kingdom, we notice a few instances of lifelong or temporary companionship of a pair, the vast majority there has no sense of fidelity to a particular partner and is free from restrictions. Reproduction is the main objective of sexual mating and partnership is free and voluntary. Darwin has been inclined to associate an æsthetic sense in many cases and advanced his idea of 'sexual selection' This is, however, a highly controversial topic to which I have no time to refer.

The institution of marriage has evolved from close partnership of the parents in looking after the offspring, the human baby being the most helpless in its infancy. Arising out of the joint care for the baby, the sense of ownership in it further strengthened the association between the parents. The family grew out of the instincts relating to group-maintenance, which can be considered under the three heads of mating, nursing, and herding.

Just, then, as sexual reproduction is the most direct means of securing the continuance of our species, so it has been the most powerful and all-pervasive of the human instincts. Freud and his school have only stressed the insistence of this fact Primitive men in their own ways recognized the need for the orderly flow of this mainstream of the passions, that is to say, for the canalization of this flow. Thus, within the domestic group, which seems to have been rather one-sided consisting predominantly of either the mother's people or the father's people—the former system being presumably the earlier—there came to be observed certain fundamental laws such as, to avoid sexual relations with group mates Jealousy and modesty had a great deal to do with the prohibition of incest The basic principle of the early household came to be that those who feed together must not breed together that sex is a disturbing factor that must altogether be suppressed within the home

The history of development of the institution has been as instructive as fascinating and I have detailed it in the other work on Sex The institution has developed in varying lines and the most widely different rites and customs have come to be attached to it

Dr Forel in his treatise 'The Sexual Question' has reviewed law both civil and criminal, as actually affecting sexual relationship and as it ideally should do His treatment of the subject has been masterly He has many bitter words to say against conventional morality institutionalized religions, and unmeaning taboos, in this sphere

The chapter in the Indian Penal Code relating to offences relating to marriage has no scientific background It does not profess to touch on the ethics of marriage, nor on the ethics of the law relating to it It simply provides against some forms of conjugal infidelity and allied offences It accepts the customs of marriage as they are and reflects the conventional morality Where, as in cases of the Hindus and the Mussalmans polygamy was sanctioned by usage, one could not be convicted of an act done with conformity with such custom There has been no law enforcing monogamy while the abolition of *Suttee* was achieved so desirably It is doubtful if law could not enforce the one as it abolished the other In the latter case, the evil took the form of a superstitious murder and as we have seen nobody can abet such murder Adultery, however, has ever been an offence in this country

The first provision is against 'cohabitation caused by a man deceitfully inducing a belief of lawful marriage' This section has remained a 'dead letter because the provision overlaps one of those of 'rape'. A consent given under a misconception of facts, especially where the party inducing such consent has guilty knowledge, is no consent. This section here can be done away with.

'Marrying again during lifetime of husband or wife' constitutes what is known as the offence of 'bigamy'. It dces not apply to male Muhammadans or Hindus but does only to Christians amongst whom monogamy is the rule and bigamy both a sin and a crime. This offence is aggravated when the fact of the former marriage is concealed from the person with whom the subsequent marriage is contracted and a heavier punishment has been provided for this form.

Contracting a mock-marriage has next been made punishable, the essence of the offence lying in deception. The offence is complete without cohabitation. It debases the sanctity of the marriage but a dishonest or fraudulent intention is necessary.

'Abdultery' has been defined and made punishable as follows :

> Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment for a term which may extend to five years, or with fine or with both. In such case the wife, shall not be punishable as an abettor.

This provision calls for comments. 'Adultery' is not punishable under the English law but it has been made so in the Indian Penal Code. The first Law Commissioners, however, did not make adultery an offence punishable under the Code. It would be interesting to consider some of their arguments.

> The following positions we consider as fully established : First, that the existing laws for the punishment of adultery are altogether inefficacious for the purpose of preventing injured husbands of the higher classes from taking the law into their own hands ; secondly, that scarcely any native of the higher classes ever has recourse to the Courts of law in a case of adultery for

redress against either his wife or her gallant ; thirdly, that the husbands who have recourse in cases of adultery to the Court of law are generally poor men, whose wives have run away, that these husbands seldom have any delicate feelings about the intrigue, but think themselves injured by the elopement ; that they consider their wives as useful members of their small households ; that they generally complain, not of the wound given to their affections, not on the stain on their honour, but of the loss of a menial whom they cannot easily replace, and, that generally, their principal object is that the woman may be sent back.

The positions thus considered 'established' are easily assailable. Nay, they are even grossly unfair. Not many in India could subscribe to views thus expressed on a thoroughly incorrect reading of the Indian mind. Although outlooks may differ, there is no reason to suppose that the 'higher' and the 'lower' classes (meaningless terms) think radically differently on a question so traditionally vital. That injured men of the 'higher class' may still be taking the 'law into their own hands' remains open to many cases other than adultery also. The second position is still weaker. That scarcely any native of the higher classes ever has recourse to criminal courts is true of civil courts also. Fortunately, (or unfortunately as one pleases), not many cases go to courts, criminal or civil, anyhow. The third position is most objectionable. That poor Indian husbands 'seldom have any delicate feelings about the intrigue' is an outrageous statement. Rather the other extreme of it. Religion, tradition, and social outlook—all make them the more sensitive—they rather err on the side of over-sentimentality in these affairs. Their wives *are* useful members of their households ; they cannot spare these for idle luxury. That they generally complain, 'not of the wound given to their affections, nor of the stain on their honour but of the loss of a menial whom they cannot easily replace' is an abominable contention.

There is yet another consideration which we cannot wholly leave out of sight. Though we will know that the dearest interests of the human race are closely connected with the chastity of women and the sacredness of the nuptial contract, we cannot but feel that there are some peculiarities in the state of society in this country which may well lead a humane man to pause before he determines to punish the infidelity of wives. The condition of the women of this country is, unhappily, very different from that of the women of England and France; they are married while still children: they are often neglected for other wives while still young. They share the attention of their husbands with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking, by law, an evil so deeply-rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust certain, operation of education and of time.

The dearest interests of the human race *have been* closely connected with the chastity of women and the sacredness of the nuptial contract and if there were any peculiarities in the state of society in this country they were that, except for a few rich and leisurely Don Juans, the poor people of the country have almost universally regarded such interests with almost superstitious esteem. Child-marriage and polygamy have undoubtedly been curses but they are well on their way to cure, the first by legislation and the second by force of a variety of circumstances. Polygamy is an evil but it trails back to a long past. It is fast dying out. Manu ordained, Islam decreed, and other religions here all regarded adultery an offence and if the framers of law did go that way they could easily have put adultery in as an offence as the Second Law Commission did. No law is fated to prevent crime totally as long as human imperfections continue and this fact need not worry law-makers as long as they feel there should be a provision to any effect. The reasons given above for not punishing a wife as an abettor, again, seem neither convincing nor satisfactory. It would be more consonant with Indian ideas, if she also were to be punished for adultery.

My criticisms so far have been of the assumptions and contentions quoted but, rationally speaking, I must say there may be contentions against adultery being criminally made punishable at all. Dr. Forel in his 'Sexual Question' has discussed 'law' as it has been and should be in this domain and I have discussed the whole thing partially in the treatise on Sex. I have already referred to the theory now gaining ground, viz., 'Ton corps est a toi' (Your body is yours). The artificial and conventional nature of marriage itself is being steadily more and more realized. We need not, however, pursue this topic here further.

Enticing or taking away or detaining with criminal intent a married woman has been next provided against. This section is a milder provision than those relating to kidnapping and abduction already studied. The principle underlying the punishment of adultery is carried here a step still further by making the abduction of a married woman of whatever age or nationality and irrespective of her consent, penal.

The Offence Of Defamation

The offence of defamation in the various ways and manners has been dealt with in a separate chapter. Sir Hari Sing Gour has a mighty lot to say in his commentary on this topic. The law of defamation, as he puts it, is based upon the fundamental principle that the reputation of a member of society, the esteem in which he is held by it, the credit and trust it reposes in his intelligence, honour and integrity, is his valuable asset, and that the love of reputation being a great moving principle of human action must be encouraged and protected. The traces of this offence were to be found in the earliest records of human history. The Mosaic law prohibited the publication of false reports affecting the character of others. The laws of Solon also punished calumniators. The civil law on the subject influenced the legislation of Western Europe. The law of England, however, marks a departure in that it places civil and criminal responsibility on distinct grounds, regarding the mischief to the private individual as the basis of the former, the mischief to society the foundation of the latter.

The offence of defamation is presented in a form materially different from that in which it is understood in English law. The authors of the Code observed :

> It appears to us evident that between the offence of defaming and the offence of provoking to a breach of peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. Even in cases where defamation has a tendency to cause acts of violence, the heinousness of defamation, considered as defamation, is by no means proportioned to its tendency to cause such acts : nay, circumstances which are great aggravations of the offence, considered as defamation, may be great mitigations of the same offence, considered as a provocation to a breach of the peace. A scurrilous satire against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odious forms. But it would be only by a legal fiction that the satirist could be said to provoke a breach of the peace On the other hand, an imputation on the courage of an officer contained in a private letter, meant to be seen only by that officer and two or three other persons, might, considered as defamation, be a very venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace.

The contentions are sound.

The second point of difference lies in that while English law excludes spoken words from the category of the crime, regarding them as of comparatively minor importance and as sufficiently redressed in compensation, the Indian Penal Code makes no such distinction, though it does not consider the question as wholly immaterial in apportioning the punishment. There are sufficient reasons to commend this. The authors argued :

> By the English law, defamation is a crime only when it is committed by writing, printing, engraving, or some similar process. Spoken words reflecting on private character however atrocious may be the imputation which these words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action Herein the English law is scarcely consistent with itself For if defamation be punished on account of its tendency to cause breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree.

A person who reads in a pamphlet a calumnious reflection on himself, or some one for whom he is interested, is less likely to take a violent revenge than a person who hears the same calumnious reflection uttered. Public men who have by long habit become callous to slander and abuse in a printed form, often show acute sensibility to imputations thrown on them to their faces. Indeed, defamatory words spoken in the presence of the person who is the object of them, necessarily have more of the character of a personal affront, and are, therefore, more likely to cause breach of the peace than any printed libel.

As a matter of fact, the emotion of anger is stirred up by these personal affronts more than indirect ones coming through written words. The offence has been defined by the Indian Penal Code thus :

> Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.
>
> Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.
>
> Explanation 2—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.
>
> Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.
>
> Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his case or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

The definition is indeed very wide. It has however, to be read with the various exceptions enumerated along with it. These exceptions are more or less on the lines of English law though they differ in minor details.

Firstly, imputation of truth which public good requires to be made or published has been excepted. This exception has been argued at length. Under this provision the defence would be able to contend successfully that his alleged libel was true and that its publication was for the public benefit Newspapers that publish unpleasant conduct of persons or people do so generally for the public benefit to ventilate grievances honestly believed to be true

Secondly, public conduct of public servants can be criticized in good faith 'Every subject has a right to comment on those acts of public men which concern him as a subject of the realm if he does not make his commentary a cloak for malice and slander' The comments must be *bona fide* and must not be in the nature of personal attacks

Thirdly, conduct of any person touching any public question can be commented upon in good faith

The other exceptions include the following

(1) Publication of reports of proceedings of courts

(2) Merits of a case decided in court or conduct of witness and others concerned

(3) Merits of a public performance A person who publishes a book submits that book to the judgment of the public

(4) Censure passed in good faith by a person having lawful authority over another

(5) Accusation preferred in good faith to an authorized person This exception covers the cases of complainants and informants who lodge complaints or informations with the police or other lawful authority regarding commission of particular crimes by persons named In cases where the complaint finally turns out to be false the public servant or the person affected can haul the complainant up for laying false information or accusation The sections governing such cases are more severe than those governing defamation and as such people will take recourse to the former rather than the latter.

6 Imputation made in good faith by a person for the protection of his or other's interests This is illustrated thus .

A, a shop keeper, says to B who manages his business 'sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty.' A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests

"The reason for holding any occasion privileged is common convenience and welfare of society, and it is obvious that no definite line can be so drawn as to mark off with precision those occasions which are privileged, and separate them from those which are not."

7, Caution intended for the good of the person to whom it is conveyed or for public good.

The definition of defamation having been made very wide, the necessity was felt thus to limit its application. It would appear that many of the cases covered by these exceptions are of such a trivial nature that no reasonable man will complain of them. It is, however, all very well that lines have been drawn with some precision as, otherwise, the wide section of law thus provided might conceivably be abused.

In these days of democracy, when oppositions have to fight for position openly, speeches are likely to denounce policies of the opposite party or belittle its achievement. Sectarian newspapers also will criticize vehemently measures and actions not favoured by them. It is therefore extremely necessary to legislate, as has been done, against criticisms running wild or degenerating into mere personal attacks. The law is rigorous, but unfortunately yet, newspapers of a certain type in India do indulge in veiled invectives and scurrilous attacks.

The offence of defamation relates to reputation and as such it should have found place in the chapter relating to personal injuries. The offence of 'hurt' has been defined as causing of 'bodily pain, disease or infirmity' to any person and defamation is only causing mental pain.

The Offences Of Criminal Intimidation, Insult And Annoyance

These offences also should have found place elsewhere. They occasion anxiety and mental anguish and since these may lead to reprisals and consequent breach of the peace, law considered such threats, insults, and annoyances as offences. Many of the cases falling under any of the heads are easily compounded and few actually come before court.

Attempts To Commit Offence

This is a general provision dealing with attempts to commit offences not made punishable by other specific sections It some cases, as we have seen, attempts to commit specific offences have been fully and exclusively provided for. Attempt to commit murder, attempt to commit robbery, are examples to the point.

This general section has provided thus :

> Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence or with both.

An attempt is illustrated in the Code itself thus :

> A makes an attempt to pick the pocket of Z by thrusting his hand into Z s pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

In many cases the Code has expressly provided for attempts. I should think a common formula could easily have been found on the line of this section itself by which all those cases also could have been dealt with under one general section.

In every crime there is first the intention to commit it ; secondly preparation to commit it ; thirdly attempt to commit it. The third stage when successful completes the crime. When unsuccessful, the person offending is yet reprehensible inasmuch as his moral guilt is the same as if he had succeeded. The differentiation in punishment has been based only on the fact that the injury is not as great as if the act had been completed. There are some criminologists who contend that a man who fires his pistol at another with intent to kill him but by an accident in his favour the latter is saved, the man should be dealt with as a murderer.

The first stage, namely, intention is not indictable. Lord Mansfield, C. J., said, "So long as an act rests in bare intention, it is not punishable by our laws: but immediately when an act is done the law judges not only of the act done, but of the intent with which it is done; and if it is coupled with an unlawful and malicious intent, though the act itself would otherwise have been innocent, the intent being criminal, the act becomes criminal and punishable."

Preparation consists in devising or arranging the means or measures necessary for the commission of the offence. It differs from attempt which is the direct movement towards the commission after preparations are made. There is, however, no sharp line of division between a preparation and an attempt. The question whether it is one or the other must in each case depend upon the circumstances.

Summary and Conclusion

I had started initially with the idea that I would make this survey of the various forms of specific crimes and the law relating thereto a rapid and concise one. This survey, however, has taken much of my space, the general scope of my work being considered. The subject is vast enough but my excuses for devoting so much space here in a general treatise are not exactly this The importance of the general Criminal Code of a country is great enough, but it is still greater here in India now in view of the fact that the Code has remained unrevised for nearly a century and India itself has lately entered into a new phase of political development.

I need hardly mention that in this survey I have tried to present a historical retrospect of the particular type of crime, a resume of causes psychological or otherwise leading to it specifically, an account of conditions abroad in respect of it, the prevalence or otherwise of it in India and to comment on any special features of it or of the law relating to it. In this respect, I hope, the survey will interest the public generally and the students of crime and law as also officers connected with the administration of crime and criminal law specifically. I have not only explained ingredients of the crime and the provisions of law relating to it but also partially entered into discussion of the ethics of the law itself. I hope the exposition will help a better understanding and the critical study accentuate the critical faculty of the student of crime and law. I shall close these discussions by summing up the critical appreciation of the Indian Penal Code as it exists to-day.

We are well aware of the utter chaos and confusion in which the law of crimes was being administered previous to enactment of the present Penal Code. This Code was originally and laboriously compiled by the first law Commissioners of whom Lord Macaulay was the chief. This towering genius joined as law member on the Supreme Council in 1834. The draft was submitted to the Viceroy in Council on the 14th. October, 1837. It was then circulated for opinion and criticism and finally revised by a small committee. It was not, however, finally enacted till after some 25 years of its first conception. It was enacted in 1860 and became practically the supreme code of Criminal Law in India in supersession of all preexisting rules, regulations, and orders.

As the Code now stands it has been spoken of as a model piece of legislation. It made a most favourable impression and was considered a monument of the great genius of Lord Macaulay. Nor was Lord

Macaulay himself unjustly proud of this achievement.

"This Code," wrote Macaulay, "should not be a mere digest of existing usages and regulations, but should comprise all the reforms which the commission should think desirable. It should be framed on two general principles—the principles for suppressing crime with the smallest possible amount of suffering, and the principles of ascertaining truth at the smallest possible cost of time and money."

The Code can claim credit on the following points :

In the first place, it did mark a splendid development over what passed for law before its time. The materials handled were enormous. They consisted of the existing systems of law in force, the most celebrated systems of western jurisprudence, especially the French Code and the Code of Louisiana, and other codes generally.

In the second place, it engaged best brains in its compilation and it was by no means hurried. The progress was slow but this afforded mature deliberation. It was criticized and improved upon by a host of contemporaneous authorities.

In the third place, the Code as it is, was wholly rationally conceived and compiled. Every single section has been argued at length and considered from all the angles. The brilliance of the reasoned discussions will not fail to strike one who peruses the reports and the wealth of illustrations portrays the picturesque narrator Macaulay was. Perhaps the rationalistic conception has been the best point to the credit of the Code. Not a single provision has been adopted merely because it formed part of any old system. Nonconformity with any provision of any particular religion has also paved the way for its wide acceptance.

In the fourth place, it marked in many cases an improvement over the English law and other existing codes on which it was fashioned. Conceptions have been widened, safeguards provided ; precision has been achieved and hardship mitigated. New offences have been carved out with precise outlines out of old formless chaos.

On the other side, however there are many things to be said.

"Unfortunately the present writer," says Sir Hari Singh Gour "cannot join in these encomiums which have been lavished upon it by indiscriminating critics without close examination, and it may be feared, solely from the charm of the great name of its reputed author."

Exactly so.

The present survey has been nothing in the shape of *a close examination of the various provisions with a* view to finding shortcomings but a *general one in which*

I have tried to explain the provisions in relation to the particular type of crime generally studied. It is only incidentally that I have offered criticisms. Even these will shatter hopes of many an admirer.

Macaulay's reputation itself is not what it was —he has been convicted of historical inaccuracy, of sacrificing truth for the sake of epigram, of allowing personal dislike and bias to distort his views of men and incidents. As a picturesque writer, he presented what he wanted to say in a very agreeable form. But he could not, nor could he have been expected to, legislate for all ages. Since his time, the world has run apace in thought. Apart from the limitation imposed by his time, his Code suffers from various blemishes which could be little expected from him and his colleagues. I would only mention a few here without giving details. I have indicated instances in the body of the discussion itself.

In the first place, the Chapters in many cases have been put haphazard and unnecessarily multiplied. Some of these could conceivably be amalgamated with others and all rearranged more logically.

In the second place, as Sir Hari Singh Gour observes, the Code sorely needs rearranging of its many sections *which would seem to have been juxtaposed for* no reason other than a merest chance. Some of the sections have been appended to Chapters other than those to which they should reasonably belong.

In the third place, over-elaboration has been the besetting sin of the entire Code. Sections have been multiplied beyond necessity. Different circumstances of the commission of a single offence have been considered for new sections although they are really to be considered in each case by the trying court for apportioning the punishment under the original offence. I have instanced many such sections in course of my discussion.

In the fourth place, many forms of crime not actually existing or doing so only rarely have been ingeniously conceived and arbitrarily added. I have indicated the 'dead letters' that have almost fallen into disuse. Many provisions of the Code overlap one another and while many sections are pedantically precise, others are bald and leave much to the ingenuity of construction.

In the fifth place, the maximum punishments laid down in many places have been so liberally fixed that the actual punishments inflicted in courts almost mock at them. The punishments in many cases run conveniently by whole numbers of years. The maximum laid down is hardly ever approached even, far from anybody contemplating to outstrip it. This is a limitation which will confront all legislators at all times but in the case of the present Penal Code it does give the look of a 'bargain theory' of justice. It would have saved much length if the offences were defined and a chart were to indicate the maximum punishments in the various cases. Punishments laid down in many cases have, again, been anomalous and in some, too severe. I have instanced cases in course of the discussion.

In the last place, the law relating to suicide, abortion, unnatural offence, and adultery has to be re-examined in view of the advanced enlightenment and progressive outlook of the present times. I have indicated the nature of the growing opinion relating to these topics.

The Code, as it is, is reminiscent of Indian conditions and Indian thought now a century old. The world has moved apace and the Code itself in consequence has grown out-of-date in many of its parts. By saying so I am only inviting thinking brains to the need of a thorough revision and re-examination now long overdue. Unfortunately it has been so far thought sufficient to amend a section here and add another there. This has only added to the bulk of an already bulky code.

To quote a progressive thinker, the received moral code, in so far as it is taught in education and embodied in public opinion or the criminal law, should be carefully examined in each generation, to see whether it still serves to achieve desirable ends, and, if not, in what respects it needs to be amended. The legal code, like the moral code, should adapt itself to changing circumstances, keeping the public good always as its goal.

I may as well explain my position. I have amply demonstrated in course of the entire work that we have travelled far away from the old school of thought which laid emphasis on the illusory idea that a criminal weighs in his mind the pleasure of his action and the pain of the social reaction and acts on a finding at which he thus arrives. Nothing can be farther from truth. In a few cases, this may really happen, but in the vast majority of crimes, the criminal is little disposed to thinking of provisions of such codes as the Indian Penal Code. A multitude of factors, internal and external, urge him to the commission of crimes and if there be any friction within him, it is furnished by his own ethics coloured though they be by religion, upbringing, and surroundings. The Indian Penal Code being a rational code, it is in conflict with many ethical ideas of the populace which is still guided by religious and social sentiments.

The Indian Penal Code in its present bulk, though sufficiently precise in its definitions and provisions, *does* present intricacies which it requires Full Benches of High Courts to solve. Lawyers cudgel their brains over many of its provisions and the whole code to most of them is a work of reference rather than one to be carried in the head.

The bulk of the populace can neither compass it nor are interested in doing so. People go their own ways and only when challenged in their actions by, or interested in bringing others within the purview of the sections that they come to enquire how they should wriggle out or rope in. The lawyers are there to advise them.

It is hopelessly futile to expect that the populace can be made familiar with the provisions of this bulky code even if a Hitler were to decree its provisions being read over daily in mass meetings. It is too elaborate to be easily grasped or retained.

That being the case, we cannot look upon it as an ethical code for guidance of the people. That must be a different thing, although the two codes must progressively come nearer and nearer to each other.

"How then," it may be asked, "do we go by the legal maxim, 'Ignorance of Law is no excuse' ?"

It has been sought to explain that everybody must know it since living in organized society implies that the rules of the society must be known and respected. This is true but we must not impose a burden which none can bear.

My explanation is this. Every legal code respects the prevailing moral values of the society. These may change and the law must also in consequence change. But the law in itself is only a codification for guidance of the society, more properly, of its agents in dealing with crime.

Thus a man commits a crime. He has not the faintest notion of what the ingredients of his crime may precisely be, what section of the code will apply, and what punishment he may ultimately merit. Almost in the same position is society. Provided the law is in conformity with the prevailing moral conceptions of the society, both will know that a wrong has been done. Society, as it does now, wants him to be dealt with. Then the matter goes out to society's agents who are in the place of experts. The judge finds out what wrong he has committed and for *his* reference, he has the Penal Code. It guides him in assessing the enormity of the crime and in imposing the punishment.

Thus the penal code, the principal one, should be a code of provisions and should reflect the degree of social disapprobation in the penal provisions it makes. It will not be an ethical code for guidance in everyday conduct of the people. *It will guide the agents of law in dealing with particular cases.*

An analogy, close though not complete, may be found in medicine. Medical books indulge in curious terminology and apparently unfamiliar nomenclature in respect of diseases and their appropriate symptoms. The populace has only vague ideas of the terms. A case of indisposition is detected by the sufferer or his friends and a doctor is called on to the case. It is the latter who examines minutely, diagnoses (often failing to do this correctly) and deals with it. The causes are independent of the medical terminology. Thus, the medical books can be intricate and hair-splitting without entailing any such fiction as the legal fiction we have quoted.

Thus, I should think, the principal penal code must reflect the prevailing moral values and the punishments the degree of social disapprobation. Although grave consequences will be involved, everybody shall be accountable *not under any such legal fiction* but *in view of the fact that a wrong has been done* and society is conscious of *at least this much.*

Thus, sociologically crime is the infraction or violation of established or codified custom or public opinion at a given time. In this sense, it is always a shifting thing, a part of which always stretches ahead of legal enactments ; legal crimes always embrace certain forms of conduct from which the odium of disapproval has fallen away. Hence, the law should keep pace with public opinion ; public opinion cannot cling tenaciously to old laws. What will move public opinion is a variety of things, the sumtotal of which may be termed 'progressive enlightenment'.

The quasi-criminal acts do not involve such grave consequences and people will acquiesce if it is pleaded that one can learn at his cost.

In these views of the matter, I think we can leave out many pedantically differentiated sections merging them under a covering one, allowing scope for the judges to use their discretions. Nor would there remain need for imagining forms of crime not prevalent at the time merely because they may come to prevail in future. As a matter of fact, too many threatened punishments create indifference. One must not imagine that every coarse or vulgar act, every little violation of right, may demand suppression by punishment. The state, like the individual, must learn to endure many minor inequities ; it must remember that the world will not immediately come to an end and it must have confidence in the firmness of its own position and in the natural effective power of moral opinions. Where there is a progressive increase of penal statutes or of the severity of the penal statutes it is not well for freedom.

The Code should be amenable to additions and amendments as deemed expedient from time to time to provide for fresh offences of a grave nature becoming prevalent but it shall be thoroughly revised after a sufficiently long span of time, say, every fifty years, from the angle of view of progressive penal philosophy and allied social sciences.

The code is a *guide* for society's *agents*. Society will be guided in its conduct by ethical conceptions and moral values which the law will only *reflect* and not *impose*. Both will be changing and law will *follow* the prevailing conceptions of social conduct and not *precede* them.

A re-examination and revision of the Indian Penal Code will not necessarily involve India in fabulous costs. Nor need she indent for brains from outside. A small commission of eminent jurists, judges, lawyers, and criminologists available in India will adapt a new Code far in advance of the present one. It will have the advantage of consulting advanced codes of law of the world and an experience of having worked the present Code in India for about a century now. Happily, the High Court Judges have pronounced views from time to time, all of which are on record. These views will be of great help. The Commission will also take account of the present condition of life and society in India. In view of the expected federation, it will be wise, nay incumbent, to have on the body of the Commission enlightened representatives of the Native States.

I have been playing for sometime with the idea that perhaps a far less cumbrous Penal Code for All-India could be devised by providing for the few fundamental offences and then leaving them to be combined where necessary. *For the general Penal Code, I would enumerate the offences that have been traditionally and almost universally considered as crimes as opposed to the quasi-criminal offences which should be included in a compendium of minor acts.* I have just elaborated my idea.

I earnestly wish the matter of revision of the Indian Penal Code be taken up early. The changes in the substantive law will necessitate modification of the procedure—a process that will allow for the enlightened measures of criminology being brought to bear on the entire system of dealing with crime and criminals.

APPENDIX C

Some Comparative Figures of Crime

Provinces	Population (Gross latest) (a)	Year	Cognizable cases	Serious Crime								
				Riot	Coining	Note forgery	Murder	Culpable homicide	Dacoity	Robbery	Burglary	Theft
Bengal	51,087,33	1932	78,390	1410	170	38	771	396	1880	841	29159	14724
		1933	72,045	1246	152	38	659	353	1507	861	26529	14308
		1934	73,233	1206	174	28	644	376	1380	848	28276	15282
		1935	70,679	1199	128	24	656	392	1257	697	26886	14552
		1936(b)	66,748	934	103	18	509	326	1140	529	24582	14192
United Provinces of Agra (c) & Oudh	49,614,833	1932	134,977	1967	57	16	1047	538	1216	710	32582	19369
		1933	133,206	1805	57	5	992	513	836	643	29788	17949
		1934	137,160	1653	63	9	998	521	773	633	34414	18418
		1935	159,286	1969	60	5	874	459	518	501	31777	16856
		1936	152,544	1771	58	4	826	506	469	482	28267	20100

(a) Small native states are possibly included
(b) From 1st April, 1937, some of the provinces have been reconstituted
(c) Provinces have been arranged in order of population

APPENDIX C

Provinces	Population (Gross latest)	Year	Cognizable cases	Serious Crime								
				Riot	Coining	Note forgery	Murder	Culpable homicide	Dacoity	Robbery	Burglary	Theft
Madras	47,193,602	1932	195,129(a)	1198	38	51	1078	211	280	849	7742	19245
		1933	232,252	963	65	21	1175	164	235	926	7401	19146
		(b) 1936	222,478	923	30	8	985	182	145	583	5841	17705
Bihar and Orissa	42,329,583	1932	46478	1273	23	49	384	213	512	286	16807	11511
		1933	44158	1083	45	38	350	212	399	264	16267	11542
		1934	43197	1073	30	30	372	222	433	291	16028	11787
		1935	46159	1128	48	28	386	237	490	333	17172	11895
		1936	50193	735	32	9	312	149	373	236	18132	13355
Punjab	24,018,639	1932	66060	1615	130	16	955	445	215	853	16071	9707
		1933	65258	1430	141	17	932	465	141	708	13983	9320
		1934	58184	1306	132	6	919	418	125	697	14622	10046
		1936	31699	1194	75	3	904	422	95	545	13728	9578

(a) The striking increase in cognizable cases in Madras and the United Provinces over Bengal figures is due partially to the large number of cases under Public and Local Nuisances.

(b) Figures for some of the years could not be collected

APPENDIX C

				Serious Crime								
Provinces.	* Population (Gross-latest)	Year	Cognizable cases	Riot	Coining	Note forgery	Murder	Culpable homicide	Dacoity	Robbery	Burglary	Theft
Bombay excluding Sind.	22,460,449	1932	31098	504	25	3	373	133	220	549	5229	7192
		1933	27111	417	29	1	356	125	157	517	4800	6933
		1934	26993	370	44	5	359	112	146	463	4941	6868
		1935	38935	274	34	1	272	104	159	368	4787	6992
		1936	36882	306	22	1	304	125	128	351	4664	6725
Central Provinces & Berar.	17,990,937	1932	45035	497	43	2	319	48	56	344	9314	21810
		1933	43021	420	34	6	292	41	43	260	8427	21398
		1934	42182	372	38	3	291	51	27	233	4118	21817
		1936	49469	525	40	1	354	92	37	250	10307	28447
Burma.	14,667,146	1932	59716	22	188	65	1122	151	1649	2241	5857	16407
		1933	59278	23	136	45	967	133	937	2120	5940	16054
		1934	60019	15	115	40	1018	152	658	1904	6117	15996
		1936	84802	23	57	22	801	158	452	1295	4733	11826

APPENDIX C

				Serious Crime								
Provinces	Population (Gross latest)	Year	Cognizable cases	Riot	Coining	Note forgery	Murder	Culpable homicide	Dacoity	Robbery	Burglary	Theft
Assam	9,247,857	1932	14141	454	48	7	114	145	104	93	4882	3697
		1933	14451	406	44	6	116	127	111	105	5107	3785
		1934	15644	437	58	8	107	134	79	96	5909	4012
		1935	15544	476	44	3	125	154	81	108	5610	4112
		1936	19927	612	18	3	92	123	48	63	5012	5757
North-West Frontier Provinces	4,684,364	1932	22478	165	10	2	575	59	154	336	2305	1583
		1933	23114	113	8	1	515	60	72	264	1826	1410
		1934	32223	140	11	2	501	67	54	235	1432	1416
		1936	24995	55	9	3	558	66	45	119	1376	1536

England and Wales.*

Principal classes of Crime in the Criminal Statistics issued by the Home Office :—

	Class of offence.	Ann. Av 1910—14	Number 1934	Number 1935
I.	Against the person	4,332	6,236	6,266
II.	Against Property :—			
	(a) With Violence	12,284	36,994	36,475
	(b) Without Violence	76,838	1,83,940	1,85,660
III.	Malicious Injury to Property	648	441	434
	(Including Arson)	283	242	202
IV.	Forgery and Currency	708	1,738	1 556
V.	Other	3,114	4.010	3,981
	TOTAL	98,207	2,33,601	2,34,574

I. Crimes of Violence against the Person.

	Ann. Av. 1910—14	Number 1934	Number 1935
Murder	153	141	120
Murder Attempts & Threats	115	108	94
Manslaughter	146	191	171
Infanticide	—	16	21
Concealment of Birth	85	71	71
Child Stealing	7	6	4
Procuring Abortion	40	73	116
Sexual Crimes—			
Rape	162	84	104
Defilement (Girls under 13)	129	97	71
do (13 to 16)	223	432	417
Indecent Assaults	1,228	2,071	1,964
Incest	71	79	88
Procuration	41	33	27
Abduction	25	25	23
Bigamy	159	312	301
Unnatural Offences, &c.	307	837	840

II (a) Against Property with Violence.

Sacrilege	179	106	109
Burglary	1,612	1,541	1,191

---

* Figures of principal classes of Crime in the criminal statistics issued by the Home Office for England and Wales are quoted here. They may interest my readers.

	Ann. Av. 1910—14	Number 1934	Number 1935
Housebreaking	4,923	14,791	14,234
Shopbreaking	4,363	14,623	14,813
Attempts to break in	483	2,313	2,412
Entering with intent	362	3,028	3,054
Possessing Housebreaking tools	142	262	404
Robbery	178	215	182
Blackmail	42	85	67

(b) Against Property without Violence

Embezzlement	1,902	2,354	2,454
Larceny :—			
Horses and Cattle	333	169	138
from Person	2,601	2,727	2,463
in House	792	6,872	6,997
by Servant	4,265	4,088	4,997
of Post Letters	121	416	265
other Aggravated	19	240	272
of Pedal Cycles	—	26,263	24,361
of Motor Vehicles	—	1,303	1,224
Obtaining by false pretences	4,454	12,855	13,826
Frauds by Agents	195	1,037	924
Falsifying Accounts	90	351	333
Other Frauds	243	2,098	2,038
Receiving stolen goods	1,636	2,996	3,358
Bankruptcy Offences	71	105	178

INDEX

Adam, H. L., 74, App. B, 18
Alcoholism (see Intemperence)
Anderson, V.V, 299
Art, and crime, 237—239
Aschaffenburg, G., 39, 252, 264, 286, 297, 396
Auburn system, the, 458—59
Austin, 139
Badiyas, App. A, 5—6
Baer, Dr., 39, 110
Bagdis, App. A, 2
Baid Mussalmans, App. A, 9
Bail system, 441—442
Bala trick, App. A, 10—11
Banfars, App. A, 2
Barnes, H. E., 39, 252, 396, 539, 601, 603, 608, 623, 654
Barwars, App. A, 6—7
Battaglia, 189, 197
Beccaria, C. B, 39, 99, 101, 138
Bentham, J., 39, 99, 547, 548, 563
Bhamptas, App. A, 8
Bhumijes, App. A, 2—3
Blood-tests, 736—38
Bogus Mecca Mowallems, App. A, 9
Bogus Ticket collectors, App. A, 12
Bonger, W.A., 39, 288, 364
Born criminal, theory of, 106—112 ✓
Borstal School, 274, 448-58 ✓
Borstal system, 445—51 ✓
Bose, Dr. Girindra Sekhar, 704
Brahmins, Jadua, App A, 10
Bribery, nature, extent, treatment of, App. B, 31—37 ✓
Burglaries and thefts, 194—95
Bureau of human heredity, 176—77
Byadhs, App. A, 9—10
Capitalism, and socialism, 201—06
Carpenter, Mary, 39, 251
Chain Chamars, App. A, 8
... Mallas, App A, 8
Charmed Rice Ordeal, 705—06
Chhaparband, App. A, 14
Chhattishgarh Chamars, App. A, 6
Chhotabhagia Muchis, App. A, 3
Child, psychology of the, 253—57
Child, study of the, 248
Civilization and crime, 240
Clearing House, for prisoners, 269
Confession in hypnosis, 660—61
Convicts, study of the, 111
... , treatment of, 412—15
Counterfeit coins, App. A, 14—15 App. B, 44—45
Court, Juvenile, 273
Crime, advance of civilization and, 240
... , against property, in India, 191—99

Crime, analogues of, 313, 315—17

... , art and, 237—39

... , causation and classification of, 323

... , characteristic features of, 323, 328—29

... , cinema and, 238

... , classical theory of, 251, 313, 316—17, 547

... , classification of, by criminologists, 363—64

... , classification of, by law codes, 365—68

... , comparative and critical appreciation of the law relating to, App. B, 17—18

... , concept of, not static, 323

... , conception of, 208—09

... , conditions of, in India, 73

... , control of, a misnomer, 338, 344—45

... , corruptive influemce of organized, 47, 54, 55

... , created by religion, 323, 325

... , early notions of, 313

... , economic changes and seasonal fluctuations in, 188, 195

... , emotional reaction to, 47

... , environment and, 144

... , extent and types of, 338—62

... , financial burden of, 47, 50, 51

... , forms of, 363—68

... , future of the human race and, 87—90

... , history of, 313—19

Crime, is it on the increase ? 87—88, 353—56

... , Indian, with reference to conditions abroad, App. B, 17—18

... , influence of inefficient and corrupt Government on, 214—16

... , insanity and, 121—22

... , influence of magic and religions upon, 223—35

... , influence of militarism and war on, 215—19

... , literature on juvenile, 251—5

... , moral and social costliness of, 47, 52, 53

... , nature of, 313—17

... , nature of human rections to, 545—46

... , nature of the problem of, 17, 47

... , opportunity and, 142—43

... , political, App. B, 18—23

... , popular idea of, 26, 313, 321—22

... , poverty and, 199—202

... , Press and, 239—40

... , prevention of, 754—768

... , private, 212—13

... , private and public, 313, 317

... , race and, 220—23

... , religion and, 223—35

... , science and, 235—37

... , sex and, 47,58, 59

... , sex-ratio and, 278—80

... , sexual, 238

... , sin, vice, tort and, 313, 319—22

Crime, standard of living and, 200—01

... , survey of specific forms, App. B, 17

... , this study of, its method and materials, 83—86

... , volume of unreported, in India, 345—48

... , wealth, vice and, 199—206

Criminal, after—care of released, 475—77

... , attitude of society towards the, 56—7

... , behaviour, 134, 145

... , caught and the uncaught, 126—29

... , classes, App. A, 1—15

... , classes, nature of the, 302—10

... , classical theory about the, 99—103

... , classification of the, 241

... , conception of the, 208—09

... , criminology and the individual, 60, 71, 72

... , definition of 94, 135—45

... , desire, aversion, instinct, feeling, emotion, sentiment, will of the 150—68

... , determining the psychic and physical individuality of, 131

... , development of clinical study of, 130—32

... , early theory of, 96—98

... , economic status of the, 188—200

Criminal, emotional reaction of society against the, 48—50

... , environmental school theory about the, 113—15

... , female, 276—292

... , fleeting personality of the, 104—26

... , habitual, 293—97, 471—73

... , instances of habitual, 60, 66—71

... , investigation, 679

... , justice, 511, 679—80.

... , juvenile, 248, 259—75

... , juvenile, preferential treatment of, 248

... , law, 511—43

... , law, international union on, 45

... , mentally defective, 118—19

... , methods of treating the, 431—42

... , natural, 137

... , nature of the, 93, 135—45, 166—67

... , neo-classical theory of the, 104

... , plight of the, 60—62

... , political organization and the, 208—09

... , popular conception of the, 93—95

... , product of heredity and environment, 56—7

... , psychology of the, 146—49

... , responsibility, 514—70

Criminal, sciences, the examination of the criminal in the light of, 131—33
... , sociology, 763
... , statistics, 186—87, 193—95, 338, 341—45, App. c.
... , type, Lombroso's theory of the, 105—12
... , types of, 241
Criminality, heredity and envirnment in relation to, 169—81
... , influence of climate on, 114—87
... , internal and external processes in, 166—67
... , nature of soil, etc., and, 184—87
... , pervasive nature of, 338, 358—62
... , seasonal fluctuation of, 185—87
... , sex and, 276—77
... , theories around the mental basis of, 116—23
Criminology, a plea for the study of, 17
... , history and scope of, 38
... , new science, the, 38, 753
... , sciences and, 38
... , scope of, 42—43
Cumming, Sir John, 86

Darrow, 65

Detection, early devices of, 657—66
... , psychology of, 675—76
Detective, agencies, 627—30
... , fiction, 672
Detention, Preventive, 293, 299—300
Devon, Professor, 45
Dharis, App. A, 6, 7
Dhekarus, App. A, 7
Dostoievsky, F.M., 238, 397
Doubling Tricks, App. A, 12, 13
Dougherty, 674, 702
Dream Analysis, 704
Dusadh, Chakai, App A, 6
... , Palwar, App. A, 2

Economic Conditions, Factor in Crime, 188, 200
Economic Conditions, Status of the criminal, 188, 200
Edwardes, S.M., 74, 289
Ellis, H, 39, 87, 111, 245, 280, 285
Elmira System, the, 459, 465
Elphinstone, 31
England, Conditions of crime in, 33—34
... , rigour of law in medeaval, 26—30
Environment, economic, 188—190
... , in relation to criminality, 169—81
... , natural and artificial, 182—184
... , Physical, 182—186
Evidence, circumstantian, 670
... , law of, 636.
... , the principles of., 631—656
Evolution, theory of 17, 19, 253

Female criminality, 276—92
... ... , nature of, 283—92
Ferrero, G. L., 131
Ferri, E., 39, 87, 197, 241, 243, 252, 293, 377, 496, 594, 607, 653, 763—64, 768
Finger-prints, 720—32
Foot-prints, 733—34
Fry, E., Mrs., 4

Gandhi Mahatma, 191, 485, 626
Garofalo, R., 39, 116, 117, 137, 241, 244, 252, 317, 377, 431, 594, 607
Gillin, 453, 456, 458, 466, 467
Gains, App A, 3
Glueck, B., 274, 474
Goddard, H. H., 39, 119, 252
Gordon, A. D. Author's preface, 741
Gour, Sir Hari Singh, 331, 335, 541, 557, 567, 563
App. B, 17, 22, 78, 122
Government, inefficient and corrupt and crime, 214—16
... , theories of, 210—13
Gross, Dr. Hans, 39, 240, 285, 685, 690, 695, 697
Guerry, 290

Habitual criminal, 293—97, 471—73
Haines, T. H., 120, 132
Hale, 645
Handwriting, 739—40
Healy, W., 39, 131, 132, 252, 268, 474
Hedonism, 503
Heredity, a potent factor, 179
... , Bureau of human, 176—77
... , in relation to criminality, 169 - 81
House of correction, 272, 410
... detention, 435, 440
Howard, J , 410, 417, 474
Human race, the political future of the, 219

Identification, of criminals, 720, 721
Identigraph, 744
Imprisonment, the institution of, 409—24
... , origin and growth of, 409
Inakoravars, App. A, 9
Incest, 229
India, conditions of crime in, 26, 30, 31, 73, 74
... , crime in, 74
... , criminal administration of, 74, 75
... , epitome of the world, 71
... , growth of castes in, 188, 190—91
... , police in, 35—37
Indian, jails, 411—12
... , Penal Code, 539—43, 553—70
... ... , critical survey of, App. B.
Individualization, 425
Infanticide, 287
Inquisition, the, 634
Insanity, crime and, 121—22

J

Instinct, definition of, 151
Intemperance, 291
Investigation, 670
... , psychology of 670

Jolly, H., 261
Judge, appointment, status and attitude of, 571—76, 577—80
Judicial Magistrates, 581
Judiciary and Executive, separation of the, 571
Judicial, process, 230
Jury, trial by, 611
Justice, concept of, 23
... , Jedburgh, 23
Juvenile, court, 273
... , crime, literature on, 251—52
... , criminal, preferential treatment of, 248
... , criminality, 248, 259, 261, 262, 443, 444

Karwal Nuts, App. A., 8
Katju Dr., 581
Kepmaris, App. A., 9

Lacassagne, A., 39
Lakshmi's Bhar, App. A., 10
Law, comparative and critical study of the, relating to crime, App. B., 17, 18
... , criminal, 511
... , definition of, 513
... , primal, 17, 20
... , rigour of in Mediæval England, 26—30
Law, uniform applicability of, 544
... , why and how changes, 23
Lawyer, 614—15
Lie-detector, 707, 746
Literature on juvenile crime, 251—52
Living, standard of and crime, 200—01
Locard, Dr. Edmond, 733, 745
Lodhas, App. A, 3
Lombroso, C., 38, 46, 105—08, 110, 113, 121, 125, 175, 183, 184, 221, 222, 241, 242, 243, 252, 256, 289, 293, 296, 313, 377, 611
London, Conditions of crime in, 33, 34
Lost-relation trick, App. A., 13
Lort-Williams-Justice, App. B, 53

Magahiya Doms, App. A. 3—4
Mallas, App. 9
Manouvrier, L. 263
Marwari Bauriyas, App. A. 14—15
Marriage, offences relating to, App. B, 107—08
Mayhew, Henry, 272
Mazaffarpur Sonars, App. A. 10—11
McDougal, 156, 501
Mercier, Dr C. A., 39, 108—9, 111 121, 139, 141—42, 144, 150, 164, 166, 317, 364, 431, 544, 549, 550, 764.
Methods, Divination, 665—66
... , Magical, 226
... , Oriental of applied Psychology, 657—66

Methods, Religious, 227—35
.. , Third Degree, 666—69
.. , Trial & Error, 23, 225—26
Minkas, App A, 9
Mitchell, 694, 741
Morris, W A, 68—59, 126
Morrison, W D, 251
Motive, 164—66

Nasim Ali, Justice, App B, 53
Nehru, Pandit Jawaharlal, 420—21

Offences, miscellaneous, 229
Oppenheimer, H., 229, 324, 486, App B, 18
Ordeal, 633, 634
... , Charmed-rice, 658—59
... , the pin down, 660—61, 705—6
Osborne, T M, 125

Pakur Murder case, App. B., 52—58
Palm prints, 734—35
Pardon, 463, 761
Parmelee, Maurice, 39, 89, 123, 133, 136, 138, 154, 157, 175, 184—85, 195, 208, 221, 222, 242, 252, 259, 294, 423, 569, 576, 621, 584, App B, 36
Parole, 464—65
Parsons, P A, 39, 50, 125, 133, 252
Pasis, App. A, 4
Penal codes, American, 534—539
... ... , Continental, 531—34, 567, 569,
Penal codes, Indian, 331 332, 335, 367, 384, 385, 396, 397, 400, 404 527, 539—43, 553—70 App B
... ... , of Ancient Egypt, 517
... ... , of Hammurabi, 517, 518
. , of the Hindus, 518—20
... ... , of the Mahammadans, 525—29
... ... , Roman, 524, 525, 531
... ... , the English 529—31, 537
... ... , the Jewish, 520—24
Penal laws in England, 34
Penal Methods, Review of, 425—81
Penal, settlement, 401—03
... , transportation, 398—403
Penology, 43, 45, 477, 628, 720
Photography, identification by, 720, 722
Pillai, S, 402, App B, 18
Pindaris, 30, App. B, 91—92
Poisoning, 229 App A, 12, 742—43
Political crime, App B, 18—23
... , future of the human race, 219
... , organization and criminality, 108—09
Poroscopy, 733
Poverty and crime, 199—202
Press, and crime, 239—40
Prevention of crime, 754—68
Preventive detention, 293, 299—300
Prisoners, study of the characters of 130—32

Private defence, the right of, 564—67
Prosecution, public, by police, 617—18
... , public, evolution of 612 613
Prostitution, 288, 289—91
Psycho-analysis, 254
... , and juvenile crime, 248
... , science of, 20
Psychology, criminal, 671
... , of the criminal, 146—49, 285
... , origin of, 148
.. , the oriental methods of, applied, 657—66
Public servant and corruption, 47, 55—56 App B 30—37
Punishment, capital, 376—394
... , corporal, 395—97
... , efficacy and ethics of, 482—508
... , enhancement of, 498
. forms of, 376
.. , modern outlook on, 500—08
... , object of, 482—83
... , origin and evolution of, 371—76
.. , Reformative, 491, 761
... , Retributive and deterrent, 26, 503
Punishment, review of forms of, 425—33
... , society's reaction to the criminals, 369
Punishment, theories of, 44, 101—03, 482, 484
... , various schools of, 482—85

Quinton, R F., 39

Radical School, the, 482, 485
Recidivism, 293, 297—98, 299
Religion, and crime, 223—35
... , offences relating to, App B,—47, 48
Religious method, 227—35
Remedies, general, of crime 754—68
Research individual and collective, 76—82
Research Institute, plea for, 752
Rossi, P., 104, 132
Russell, Bertrand, 212, 585

Sacrilege, 229
Salvation Army, 476, App A—8
Sanaurhiyas, App A, 9
Sandars, App A, 4—5
Scotland Yard, 37, 297, 746
Science, and crime, 235—37,
... , of human behaviour the, 175
Sentiment, definition of, 162—63
Sex and crime, 47, 58—59, 276, 277—92
Shaw, G B, 420—21, 480, 499, 502, 759, 761
Socialist theory, 211, 212
Socialism and Capitalism, 201—06
Spaulding, 132
Statistics, of Conviction, German, 260
... , English 260, 261, App C.

Statistics, Criminal, 186,—87, 193—95, 338, 341—45, 356, App. C.
... , Criminal, for England and Wales, 355—57, App. C, 137—38
... , of female criminality, 283
Steinmetz, S. R., 229
Stephen, J. F., 139, 487, 489, 594, 610, 635
Sulaiman, Sir Shah—Justice—App B 23
Sutherland, E. H., 39, 129, 145, 252, 324, 418, 438, 445, 454, 502, App. B—32
Swindlers, Common, of India, 302—10. App. A. 1—15
System, merits and demerits of prison, 409, 416—24
... , the bail. 441—42

Tannenbaum, 421—22
Tapka trick, App. A, 11
Tarde, G., 39
Telegraphic—money—order trick, App. A—14
Thefts, burglaries and, 193—95
Theory of Born Criminal, 106—12
... of early criminals, 96—8
... of the environmental school, 113—15
... of evolution, 253
... of exchange, 680—86
... of feeblemindedness, 118—20
... of Government, 210—13
... Individualistic, 211—12
... Moral Insanity, 117, 118

Theory nature of, 40
... of natural crime, 313, 318—19
... the classical, about the criminal. 99—103
... the classical of crime, 251
... the Criminal Type, by Lombroso, 105—12
... the neo-classical, 104
... of parasitism, 198—99
... of Punishment, 101—03
... Socialist, 211—12
Thom, Sir John—Justice, 578
Thugs, 30, App. B.,—66, 92
Treason, 229. App. B., 18—23
Treatment of convict, 412—15
Trial and Error method, 225—26
Truth, no man tells the exact, 689—711
Truth Serum, 746
Tuntia Musalmans, App. A., 5

Ulpian, Roman Lawyer, 24, 511

Vice, Wealth and crime and, 199—206
... , as distinguished for crime 313, 320

Wager, of battle, 632
... , of law, 632
Wealth, crime and vice and, , 199—206
... , problem of equitable distribution of, 206—07
Wells, H. G., 154—55, 211, 270
Westermarck, 485
Witchcraft, 229, 316

SERVICE IS OUR MOTTO & HONESTY OUR POLICY.

THE STANDARD LIBRARY

DACCA

(Books ; Paper ; Stationery)

Some of our outstanding publications

CRIME AND CRIMINAL JUSTICE

BY

Mr. Abul Hasanat, I. P.,

Superintendent of Police, Noakhali, Bengal, India, author
of eminent works on Sex and on Sufism
Pp—915 Rs 5 8 (8s 6d)

TARIKAT

BY

Mr. Abul Hasanat, I. P.,

Author of Crime and Criminal Justice
A learned book on Sufism in Bengali
Pp—215. -/14 -

THE SCIENCE OF SEX

(Illustrated) *(In English)*

JAUNA BIJNAN

(Illustrated) *(In Bengali)*

BY

Mr. Abul Hasanat, I. P.,

With a Foreword by the Foremost Psychologist, Doctor Girindra
Sekhar Basu, M B D Sc

The most comprehensive, scientifically accurate, and illuminating studies of Sex published in any language in the East. They are the result of ten years' research work All about Sex has been discussed. They have analyzed sex-relations thoroughly and humanly—and indicated how Marriage can be made lastingly full and happy.

Dr. Girindra Shekhar has characterized the Bengali Edition as "the Kam Sanhita," Sir P. C. Roy, as a "unique treasure in Bengali literature" and wished its circulation "to every household," Mr. A. S. Roy, I.C.S., acclaimed it as "an encyclopædia" and others have spoken of it as "the most well-written book in India," "a masterly thesis," etc., etc.

The "Amritabazar", "Advance", "Anandabazar", "Muhammadi", Prabashi", "Vichitra". "Desh", and other leading papers and journals have commended the work in most glowing terms.

Innumerable requests for particulars have required us to indicate the scope, etc., briefly here. The Bengali Edition has

PAGES—532, Illustrations 21. Chapters 12.

Complete with synopses, marginal notes; glossary, etc.

Chapters with VERY BRIEF contents :—

Sex-study—history—in various ages, countries-necessity of knowledge—psychology—science, etc., etc.,—pp17-53.

Sex-impulse—nature-relation to body, senses, mind, etc.—pp 54-76.

Sex-mechanism—anatomical expositious—illustrated—pp 77-92.

Instinctive desire-origin-development-variation in men, women, ages, countries, climes, etc., etc.,—detailed study—pp 93-140.

"Perversion", "Inversion", etc ,—nature-variety-causes—cure-detailed scientific study—pp 141-194.

Marriage—history-development-need-variation of customs-essentials-forms—"Companionate marriage"—etc., detailed—pp 195-254.

Prostitution—origin-developmentin-different countries-nature-causes-venereal disease-future, etc., pp 255-314.

Sex-union-courtship-impotency-frigidity-virility-retention, etc., etc., detailed study—pp 315-389.

Miracle of Procreation-conception-sterility-hygiene in pregnancy—child-birth-upbringing of children. etc., etc., highly instructive-illustrated—pp 390-451.

Birth control—necessity-justification-theory and practice-Eugenics-Determination of sex—illustrated-illuminating—pp 452-496.

Resume-current social problems-future of human race-conclusion, etc,—pp 497-532.

The most complete study—the latest word on Sex.

Bengali Edition Rs. 4/8/- out already—being ordered from all parts of India and outside India.

English Edition—illustrated—to be of about 600 pages and priced at about Rs. 6/- Revised and enlarged. To be out in due course.

Another outstanding book we supply :

RURAL BENGAL.

BY

Mr. H. S. M. Ishaque, M.A. I.C.S.

District Magistrate, Noakhali.

A most thoughtful treatise touching upon all problems affecting Rural Bengal and indicating their solution. Would prove invaluable to Union Boards, Sanitary and Rural welfare workers and the general public. Foreword by the Honb'le Mr. H. S. Suhrwardy, M. A., B. C. L., Bar-at-Law, Minister, Labour and Commerce, Government of Bengal. pp. large size -194- Rs. 2.

× × × × ×

Remember us for all your book requirements, no matter what the subject, the language, and where published. We shall supply text-books for your wards and other books—all subjects—for your school, office, club, or private Libraries.

The Standard Library,
Dacca, Bengal, India.